84-627

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE CITY COUNCIL OF THE CITY OF CHICAGO,
Petitioner,

v.

MARS KETCHUM, et al.,
Respondents,

and

CHARMAINE VELASCO, et al.,
Respondents,

and

POLITICAL ACTION CONFERENCE OF ILLINOIS, et al.,
Respondents.

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WILLIAM J. HARTE
111 West Washington Street
Chicago, Illinois 60602
(312) 726-5015
Attorney for Petitioner, The City Council of the City of Chicago

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

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AMENDED OPINION
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 83-2044, 83-2065 and 83-2126

MARS KETCHUM, et al.,

Plaintiffs-Appellants,

v.

JANE M. BYRNE, et al.,

Defendants-Appellees.

Appeals from the United States District Court for
the Northern District of Illinois, Eastern Division.
Nos. 82 C 4085, 82 C 4820 and 82 C 4431
Thomas R. McMillen, *Judge.*

ARGUED NOVEMBER 1, 1983—AMENDED AUGUST 14, 1984*

Before WOOD and CUDAHY, *Circuit Judges*, and KELLEHER, *Senior District Judge.***

CUDAHY, *Circuit Judge.* Plaintiffs, including individual black and Hispanic residents of the City of Chicago, sued

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* This is a revised opinion. The original panel opinion in this case was issued on May 17, 1984 and has been withdrawn. Judge Harlington Wood, Jr. concurs fully in this revised opinion and has withdrawn his special concurrence in the original panel opinion.

** Honorable Robert J. Kelleher, Senior District Judge for the Central District of California, is sitting by designation.

several individual defendants and the City Council of the City of Chicago alleging that the 1981 redistricting plan for the aldermanic wards of Chicago violated section 2 of the Voting Rights Act of 1965, as amended on June 29, 1982, by Pub. L. No. 97-205, § 3, 96 Stat. 134 (1982), 42 U.S.C. § 1973 (1982), the fourteenth and fifteenth amendments to the U.S. Constitution, various federal civil rights statutes and several Illinois constitutional and statutory provisions. The district court rejected plaintiffs' fourteenth and fifteenth amendment claims but entered judgment for plaintiffs on their Voting Rights Act claim and subsequently adopted a new ward map. Plaintiffs now appeal this final district court order primarily because they deem the relief granted to be insufficient. For the reasons stated herein, we affirm in part, reverse in part and remand for reconsideration of the appropriate remedy.

I
Background

The City of Chicago is divided into fifty aldermanic wards, each with nearly equal population and composed of contiguous and compact territories. The City Council must redistrict the city on the basis of new census data by December 1 of the year following the taking of a national census. Ill. Rev. Stat. ch. 24, §§ 21-36 and 21-38 (1981). The census taken in 1980 showed that the city population was 3,005,072 so that the ideal population per ward would be approximately 60,101 (Stipulation of Facts 52, Appendix B to Brief of Defendant-Appellee, The City Council of the City of Chicago) [the "Stip."]. Because virtually every ward varied from this ideal figure (Stip. 60), it was necessary for the City Council to devise a redistricting plan by December 1, 1981.

The demographic composition of Chicago changed significantly between 1970 and 1980 due to a major decrease in the size of the white population and increases in the size of

the black and Hispanic populations. The respective population percentages were as follows (Stips. 48 and 52):[1]

		1970	1980
Non-Hispanic	White	65.5%	43.2%
	Black	32.7%	39.8%
	Hispanic	7.3%	14.0%

In 1970, blacks had a population majority in fifteen wards, but, in 1980, under the 1970 ward map, blacks had a majority in nineteen wards and a plurality of 49.3% in another ward. In 1970, Hispanics had no majority ward, but, in 1980, again under the 1970 map, Hispanics had four majority and two plurality wards. In 1980, therefore, non-Hispanic whites had a majority in twenty-two wards and, presumably, a plurality in two additional wards (Stip. 62; appellants' brief at 10-11).

In April and May of 1981, defendant Martin R. Murphy, Commissioner of the Department of Planning of the City of Chicago, and defendant Thomas E. Keane, former alderman of the 31st Ward, drafted a new ward map in conformance with the 1980 census population figures. In September and October 1981, Mr. Murphy consulted with various city officials and transmitted to the City Council's Subcommittee on Redistricting his census

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[1] The figure of 247,343 for the Hispanic population in 1970 is approximate and based on only a 15% sampling. Stip. 48. In the 1980 census, an Hispanic person was asked first to identify himself or herself as white, black or other and was then to indicate that he or she was Hispanic. As a result and because of other classifications such as Asian, the sum of the white, black and Hispanic figures does not equal the total population. Stip. 51. The 1980 figures on Hispanics are also not directly comparable to 1970 Hispanic census data because of such factors as overall improvements in the 1980 census and improved question design. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1981, 3 (1981).

data and ward map draft. Information concerning each proposed new ward was submitted to the alderman currently representing that ward, but the city-wide map was not submitted to the City Council. This "October map" provided for twenty-four non-Hispanic white majority wards, eighteen black majority wards, five Hispanic majority wards and three wards with no majority (Stips. 73-84).

On November 9, 1981, the Subcommittee on Redistricting held its first and only public meeting at which the proposed ward map was publicly displayed for the first time. This map, like the "October map," provided for twenty-four white wards, eighteen black wards, five Hispanic wards and three wards without any majority, based on a figure of more than 50% of total population as constituting a majority. Commissioner Murphy, however, incorrectly stated at the meeting that the map provided for nineteen black majority wards and twenty-six white majority wards (Stips. 85-88).

After accepting certain amendments, the City Council, on November 30, 1981, adopted by a vote of twenty-nine to seven the final map (the "1981 map" or "City Council map"), which provided for twenty-four white majority wards, seventeen black majority wards, four Hispanic majority wards and five wards with no majority group (Stips. 105-106). Several alternative maps had been proposed but had received relatively little consideration. In addition, the City Council under Chicago's Home Rule powers passed an ordinance requiring that seventeen, rather than ten, aldermen must vote against a redistricting ordinance before a substitute ordinance could be submitted to a public referendum. Ill. Rev. Stat. ch. 24 § 21-39 (1981); Stip. 100.

In the summer of 1982, three groups of plaintiffs filed voting rights complaints, including a group of nine black voters of the City of Chicago (the *Ketchum* plaintiffs), a group of six Hispanic voters of the City of Chicago (the *Velasco* plaintiffs) and another group of four individuals and a black political organization (the Political Action

Conference of Illinois). The defendants in each case were Jane Byrne, Mayor of the City of Chicago; Martin R. Murphy, Commissioner of the Department of Planning of the City of Chicago; Thomas E. Keane, former alderman of the 31st Ward; the City Council of the City of Chicago and the Board of Election Commissioners of Chicago. The three suits were consolidated for all purposes and another group of five voters from the 42nd and 43rd Wards (the *Pillman* plaintiffs-intervenors) and the United States were granted leave to file intervening complaints. Neither the United States nor the *Pillman* plaintiffs are involved in this appeal. The individual defendants, Byrne, Murphy and Keane, were dismissed at the end of plaintiffs' case (Tr. 2448-55), and that dismissal has not been appealed.

The trial lasted from October 9 through December 7, 1982. On December 21, 1982, District Judge Thomas R. McMillen delivered an oral opinion from the bench. The court rejected plaintiffs' fourteenth and fifteenth amendment claims finding that the motivation for the adoption of the 1980 redistricting map by the City Council "was not based on the intent or purpose of discriminating against any minority group," but, rather, the reason "was to preserve the incumbencies of those members of the City Council who were voting on the map" (Tr. 4083). The court did, however, find a violation of section 2 of the Voting Rights Act, as amended in 1982, because the "total result" of the map was "unfair" and ordered the defendants to draw a new map revising four wards, although in fact seven wards were changed in the court-approved map. Tr. 4107, 4112-13. On December 23, 1982, defendants presented their revised map, which the court adopted on December 24, 1982, over objections of the black and Hispanic plaintiffs. Plaintiffs presented a motion for modification which was denied on May 12, 1983.

Plaintiffs alleged, as they now argue on appeal, that the City Council map caused dilution in minority voting strength through four techniques—fracturing, packing, retrogression and boundary manipulation. The trial court, however, rejected most of these claims (Tr. 4100-05) and

found the City Council map unfair only in that it caused retrogression from the nineteen majority black wards in 1980 under the 1970 map to seventeen majority black wards under the new 1981 map.[2] It therefore ordered that a black majority be restored to the 37th and 15th

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[2] "Retrogression" may be defined as a decrease in the new districting plan or other voting scheme from the previous plan or scheme in the absolute number of representatives which a minority group has a fair chance to elect. *See Beer v. United States*, 425 U.S. 130, 141 (1976); *Rybicki v. State Board of Elections of the State of Illinois*, 574 F. Supp. 1082, 1108-09 and nn.74 & 75 (N.D. Ill. 1982) (three-judge panel) ["*Rybicki I*"]. Here, the term refers to a reduction in the number of wards with an effective majority of the relevant minority group from the number of such wards which existed immediately before the redistricting plan was instituted. The circumstances of retrogression suggest a shortfall in minority representation below what would have been anticipated based on changes in overall population proportions. To correct retrogression does not necessarily (or usually) imply the achievement of proportional representation. *Beer v. United States*, 425 U.S. at 141 (reapportionment plan which does not provide proportional representation for blacks does not violate nonretrogression rule as long as blacks can elect as many black representatives as was possible under the previous plan). *See also City of Lockhart v. United States*, 103 S. Ct. 998, 1003 (1983) (adopting *Beer* analysis that section 5 preclearance could be granted as long as the new plan "did not increase the degree of discrimination against blacks"); Howard and Howard, *The Dilemma of the Voting Rights Act—Recognizing the Emerging Political Equality Norm*, 83 COLUM. L. REV. 1615, 1622-23 n.29 (1983) [*The Dilemma of the Voting Rights Act*]. Rather, the nonretrogression rule requires the maintenance of representation at roughly the same level as was formerly achieved. The application of the nonretrogression rule in the instant case, where the population of Chicago is declining but the number of wards remains constant, may be more clearly defensible than where the city population is falling and the number of election districts (such as state or congressional representative districts) assigned to the city is also declining. In the latter situation, a retrogression analysis may (but does not necessarily) overstate the minority claim. *See, e.g., Rybicki I*, 574 F. Supp. at 1108-09.

Wards (Tr. 4107). The court also determined that there should be four majority and one plurality Hispanic wards (Tr. 4112-13).

Several important principles underlying the district court's decision should be re-emphasized. First, the district court held that protection of incumbencies—even when accomplished by purposeful manipulation of the racial composition of the voting unit—does not constitute deliberate discrimination. Second, in determining a section 2 violation, the district court said that only the overall city map and, in particular, only retrogression on a "city-wide scale" need be examined; the situation within particular wards and "retrogression" in the size of a majority within individual wards need not be considered. Such phenomena as packing, fracturing and boundary manipulation were also deemed to require no consideration. Third, the district court said that voting age population rather than total population figures should be utilized in determining the relative racial composition of a ward for remedial purposes. Fourth, the court found that a simple majority (*i.e.*, more than 50%) of voting age population is the only criterion to be used in determining whether a particular minority has a reasonable opportunity to elect a candidate of its choice.

On appeal, plaintiffs-appellants have requested that we order the district court to devise a new map which remedies the alleged dilution of minority voting strength through manipulation, packing, fracturing and retrogression within individual wards and which adopts a 65% minority population guideline for remedial purposes, whenever possible. In addition, appellants urge that we instruct the trial court to enter a finding of intentional discrimination in violation of the fourteenth amendment against blacks and Hispanics in the drawing of the City Council map.[3]

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[3] Appellants also challenge the sufficiency of the district court's oral opinion purporting to constitute findings of fact and conclusions of law under Rule 52(a) of the Federal Rules of Civil Procedure. In light of our holding on this appeal, it is not necessary to address this issue.

II
The 1982 Voting Rights Act Amendment

The Voting Rights Act, 42 U.S.C. § 1973, was amended and extended in June 1982. Under the previous version of section 2 of the Voting Rights Act, which had been judicially construed to parallel the fifteenth amendment, a violation could be found only if the discrimination were found to be intentional. *City of Mobile v. Bolden*, 446 U.S. 55, 60-61 (1980). The most significant change brought about by the 1982 amendments was to eliminate the requirement of *intentional* discrimination by substituting a "results" test for the "purpose" test imposed by the Supreme Court and by listing the factors to be considered in determining whether on the basis of the "totality of cicumstances" the Act has been violated.[4]

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[4] Section 2 as amended states:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (1982).

In *City of Mobile v. Bolden*, 446 U.S. 55 (1980), a plurality of four Justices had held that, in order to establish a violation of the fifteenth amendment, a "racially discriminatory motivation" must be established. *Id.* at 62. Similar proof of intent was required to establish a violation of the equal protection clause of the fourteenth amendment in racial vote dilution cases. *Id.* at 66. The plurality opinion of the Supreme Court also concluded that, because Congress intended section 2 of the pre-1982 Voting Rights Act to track the fifteenth amendment, section 2 also required proof of discriminatory intent. *Id.* at 60-61. The relevant legislative history of amended section 2 expressly states that it was intended to replace the *Bolden* intent requirement with a "results" standard. Congress intended that, "[i]f the plaintiff proceeds under the 'results test', then the court would assess the impact of the challenged structure or practice on the basis of objective factors, rather than making a determination about the motivations which lay behind its adoption or maintenance." S. Rep. No. 417, 97th Cong., 2d Sess. 27 (1982) ["Senate Report"], *reprinted in* 1982 U.S. Code Cong. & Ad. News 177 *et seq.*

The standard for determining a section 2 violation was indicated in the legislative history as follows:

> New Subsection 2(b) delineates the legal analysis which the Congress intends courts to apply under the "results test." Specifically the subsection codifies the test for discriminatory result laid down by the Supreme Court in *White* v. *Regester* . . . . 412 U.S. 755, at 766, 769. The courts are to look at the totality of the circumstances in order to determine whether the result of the challenged practice is that the political processes are equally open; that is, whether, members of a protected class have the same opportunity as others to participate in the electoral process and to elect candidates of their choice. The courts are to conduct this analysis on the basis of a variety of objective factors concerning the impact of the challenged practice and the social and political context in which it occurs.

Senate Report at 67 (footnote omitted). Plaintiffs, therefore, need only show "that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process." *Id.* at 27.

The legislative history and subsequent judicial interpretation of the 1982 amendments clearly demonstrate that claims of vote dilution come within the scope of the Act. Senate Report at 30 n.120; *Rybicki v. State Board of Elections of the State of Illinois*, 574 F. Supp. 1147, 1148 (N.D. Ill. 1983) (three-judge panel) ["*Rybicki II*"]. As stated in *Rybicki II*, it is clear that the amendments are intended to apply to redistricting plans and that their application to a current redistricting plan poses no problems of retroactivity because such application is in fact prospective to the elections to be held during the next decade. *Rybicki II*, 574 F. Supp. at 1148 n.3; *Major v. Treen*, 574 F. Supp. 325, 341-42 n.20 (E.D. La. 1983) (three-judge panel).

In order to determine whether a suspect election structure or practice constitutes a violation of section 2 under the "results" test and in order to remain faithful to Congress' express intent, we should attempt to apply the factors set forth in Congressional Committee reports.[5]

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[5] The report of the Senate Judiciary Committee listed "typical factors" as including:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot

(Footnote continued on following page)

[5] *continued*

provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of the plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution.

The cases demonstrate, and the Committee intends that there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.

Senate Report at 28-29 (footnotes omitted). The Subcommittee on the Constitution of the Senate Judiciary Committee enumerated a partial list of twenty "objective factors" gleaned from various sources, including:

(Footnote continued on following page)

These factors were derived from *White v. Regester*, 412 U.S. 755 (1973), the leading pre-*Bolden* Supreme Court case, and *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976). *Zimmer* articulated the aggregate of factors upon which a claim of vote dilution might be based. 485 F.2d at 1305-07. *White v. Regester*, which affirmed a district court decision declaring invalid multi-member districts in Dallas and Bexar Counties, Texas, relied on evidence of traditional racially exclusionary practices (such as use of a poll-tax and exclusion of blacks from the Democratic Party primary process) and of certain other historical and socio-economic factors or circumstances. These circumstances included the failure of the Democratic Party to "exhibit good-faith concern for the political and other needs and aspirations of the Negro community," use of racial campaign tactics to defeat candidates with black

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[5] *continued*

(1) some history of discrimination; (2) at-large voting systems or multi-member districts; (3) some history of "dual" school systems; (4) cancellation of registration for failure to vote; (5) residency requirements for voters; (6) special requirements for independent or third-party candidates; (7) off-year elections; (8) substantial candidate cost requirements; (9) staggered terms of office; (10) high economic costs associated with registration; (11) disparity in voter registration by race; (12) history of lack of proportional representation; (13) disparity in literacy rates by race; (14) evidence of racial bloc voting; (15) history of English-only ballots; (16) history of poll taxes; (17) disparity in distribution of services by race; (18) numbered electoral posts; (19) prohibitions on single-shot voting; and (20) majority vote requirements.

Senate Report at 143-44 (footnotes omitted). In *Rogers v. Lodge*, 458 U.S. 613, 623-27 (1982), the Supreme Court approved a finding of intentional discrimination based upon an analysis of factors similar to those discussed in the legislative history of amended section 2 and those considered in *White v. Regester*, 412 U.S. 755 (1973).

support and the fact that only two blacks had been elected to the Texas House of Representatives from Dallas County since Reconstruction. 412 U.S. at 767. The district court thus found that the black community was "generally not permitted to enter into the political process in a reliable and meaningful manner." *Id.*

The approach which the *White v. Regester* Court utilized in analyzing the historical circumstances of the Hispanic community of Bexar County (containing the City of San Antonio) is perhaps more directly applicable to our case. The Supreme Court considered the effect on political participation of discrimination in education, employment, economics, health and other areas. *Id.* at 768.

It is important to recognize that the circumstances identified in *White v. Regester* were thought to be useful in characterizing a system utilizing multi-member election districts. In a case where lines are drawn to establish discrete electoral units and to distribute racial and ethnic populations among districts, the ways in which these lines are drawn may become independent indicia of discriminatory intent or result. Such "direct" factors in the drafting process of individual districts may augment or even take the place of the *White v. Regester* "background" factors which indicate the historical or sociological climate of an entire county or other political unit. *See also Major v. Treen*, 574 F. Supp. at 342-43 n.22.

The political situation in the City of Chicago is obviously somewhat different from that addressed in *White v. Regester*. The sorts of discrimination in politics and in governmental contexts which have been alleged (and in some cases proven in court) in Chicago have been less open and notorious than what was historically the case in Dallas and Bexar Counties in Texas. Elected officials and the Democratic Party in Chicago have over the years been somewhat more responsive to black and Hispanic concerns, and in Chicago numerous black public officials, including aldermen, state senators and representatives, U.S. representatives and now the Mayor, have been elected.

However, adverse social and economic circumstances involving discrimination, depressed socio-economic conditions, lower income, housing and school segregation, and traditionally low voter registration and turn-out have existed for the black and Hispanic communities in Chicago. *Rybicki II*, 574 F. Supp. at 1151-52. In addition, employment or other forms of discrimination have been alleged or proven in such city units as the Chicago Police Department, the Chicago Housing Authority, the Chicago Board of Education, the Chicago Public Library and the Chicago Park District. *Rybicki v. State Board of Elections of the State of Illinois*, 574 F. Supp. 1082, 1120-21 (N.D. Ill. 1982) (three-judge panel) ["*Rybicki I*"]. While blacks have been represented in the City Council, the Hispanic community has not, having elected no alderman between 1920 and 1980. Stip. 117. In *Puerto Rican Organization for Political Action v. Kusper*, 350 F. Supp. 606, 611 (N.D. Ill. 1972), *aff'd*, 490 F.2d 575 (7th Cir. 1973), the district court issued an injunction requiring the preparation and distribution of certain election materials in Spanish in order to protect the right to vote of Spanish-speaking individuals. Finally, we note that the three-judge *Rybicki* court found intentional discrimination in the redistricting plan, based on the 1980 census, of certain state legislative districts in Chicago. *Rybicki I*, 574 F. Supp. at 1108-12.

The district court, in the case before us, rejected plaintiffs' claims of a section 2 violation based on dilution of minority voting strength through packing and fracturing of minority communities. Instead it found that these practices were the result of severe housing segregation of the black community in certain areas and the incumbent aldermen's desire to protect their incumbencies (Tr. 4102). The court did, however, find a section 2 violation, not on the basis of purposeful discrimination, but on the basis of the retrogression in the 1981 map in the number of wards with a black majority population. We approve this finding of a section 2 violation based on retrogression and on the manipulation of racial voting populations to achieve retrogression.

III
Intentional Discrimination

Appellants also ask us to reverse the trial court's determination that there has been no fourteenth amendment violation. In order to establish such a violation, we would be required to find that the City Council had intentionally discriminated against minorities under the criteria set out in *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The Supreme Court there stated in its plurality opinion that, in order to prove a claim of voting strength dilution, the "plaintiff must prove that the disputed plan was 'conceived or operated as [a] purposeful devic[e] to further racial . . . discrimination.'" 446 U.S. at 66 (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971)). It is not, however, necessary for a plaintiff to demonstrate that discriminatory purpose is the only underlying motivation for the challenged redistricting plan as long as it is one of the motives. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977); *Rybicki I*, 574 F. Supp. at 1106-07.

In *Rogers v. Lodge*, 458 U.S. 613 (1982), the Supreme Court retreated somewhat from the plurality position in *Bolden* without actually overruling *Bolden*. In *Rogers*, the Court affirmed the district court's finding of intentional discrimination based on indirect and circumstancial evidence and endorsed its reliance on a "totality of the circumstances" approach. *Id.* at 622-27. The factors cited in *Rogers* as relevant to a determination of discriminatory intent include bloc voting along racial lines; low black voter registration; exclusion from the political process; unresponsiveness of elected officials to needs of minorities, and depressed socio-economic status attributable to inferior education and employment and housing discrimination. *Id. See also Buchanan v. City of Jackson*, 708 F.2d 1066 (6th Cir. 1983) (district court decision remanded for reconsideration in light of amended section 2 of the Voting Rights Act and *Rogers v. Lodge* which recognized that discriminatory purpose can be based on circumstantial evidence including the *Zimmer* factors);

Buskey v. Oliver, 565 F. Supp. 1473, 1481 (M.D. Ala. 1983) (discriminatory result may be established by several relevant "circumstantial factors" enumerated in the pre-*Bolden* cases, *White v. Regester* and *Zimmer v. McKeithen*); Note, *The Constitutional Significance of the Discriminatory Effects of At-Large Elections*, 91 Yale L.J. 974, 978-81 (1982).

The district court in the case before us found that protection of incumbent aldermen was the motivation underlying the City Council redistricting plan. Yet several other factors, similar to those which led the court in *Rybicki I* to conclude that intentional discrimination was present in the legislative redistricting plan, are strong evidence of intentional discrimination here as well. First, there is the retrogression, in the context of a substantial increase in the percentage of blacks in the population, from nineteen majority black wards in 1980 under the 1970 map to seventeen majority black wards under the 1981 City Council map. *Supra* n.2; *Rybicki I*, 574 F. Supp. at 1108-09. *See also City of Rome v. United States*, 446 U.S. 156, 185 (1980) (electoral changes cannot be permitted which lead to retrogression in the position of racial minorities in the exercise of their electoral rights); *Beer v. United States*, 425 U.S. 130, 141 (1976) (retrogression in the position of racial minorities is not permitted under the Voting Rights Act); *Buskey v. Oliver*, 565 F. Supp. 1473, 1482 (M.D. Ala. 1983) (retrogression may constitute unlawful vote dilution under amended section 2 of the Voting Rights Act); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 1022 (D.D.C. 1981) (three-judge panel), *aff'd*, 103 S. Ct. 530 (1982) (reduction of black voting strength indicates "invidious motive" in action for declaratory relief under section 5 of the Voting Rights Act); *Hale County, Alabama v. United States*, 496 F. Supp. 1206, 1218 (D.D.C. 1980) (three-judge panel) (retrogressive effect of changes in voting scheme supports

inference of discriminatory purpose in action brought under section 5 of the Voting Rights Act).[6]

Second, discrimination may be identified in the manipulation of certain ward boundaries to adjust the relative size of racial groups in the City Council map. For example, before the 1981 redistricting, four wards—the 7th, 15th, 18th and 37th Wards—had populations in excess of the 60,101 required under the redistricting plan. Population therefore had to be moved out of those wards in order to accomplish the redistricting mandate. Three of the four wards had strong, but not overwhelming, black majorities. The fourth ward (the 18th) had a strong black plurality. In order to accomplish the required redistribution of population, however, blacks were moved out of these wards in much greater numbers than their proportion of the population and in greater numbers than required to accomplish the necessary reduction. Additional people, comprising a mix of blacks and non-minorities, were then moved into these wards to make up the deficit with a resulting sharp reduction in the proportion of blacks in those wards. This process is illustrated by the following chart:

Ward	1970 Map	% Black	Total Moved Out	% Black	Total Moved In	% Black	Oct. Map	% Black
7	69,521	62.6	14,176	93.7	5,002	66.6	60,347	55.6
15	72,255	66.4	17,847	96.5	5,846	0.0	60,254	51.0
18	61,409	49.3	10,729	98.6	9,440	85.6	60,120	46.2
37	77,394	76.4	40,035	96.2	23,149	1.4	60,508	34.5

See Appellants' brief at 21; Defendant's Exhibit 1I, Appendix A to Brief of Defendant-Appellee, The City Council of the City of Chicago [Def. Ex.].

This very practice was identified in the *Rybicki I* opinion, where it was found to constitute manipulation designed to dilute minority voting strength. In *Rybicki I* in

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[6] Retrogression causing erosion in the relative voting strength of minorities is often an issue in cases brought under section 5 of the Voting Rights Act. *See The Dilemma of the Voting Rights Act, supra* n.2, at 1622-23 n.29.

several legislative districts, large numbers of blacks were moved out, whites moved in, and the excluded blacks "packed" into a district with an unnecessarily high proportion of blacks and with a resulting "waste" of black votes. *Rybicki I*, 574 F. Supp. at 1111-12.[7] Examples of "fracturing," in which blacks are moved out of black majority wards and into white majority wards where they would constitute a sizeable but politically ineffective minority, were also identified.[8] *Rybicki I*, 574 F. Supp. at 1109-11.

In *Rybicki I*, the three-judge court found that these practices of manipulation, packing and fracturing were the product of an intent to preserve the incumbencies of various white legislators. Nevertheless, the court said:

> It may, of course, be argued that this manipulation of racial populations in the district was accomplished for the purpose of maintaining the incumbency of a white Senator and was not necessarily indicative of

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[7] Districts with a black majority greater than 65%-70% (the percentage considered necessary to ensure blacks a reasonable opportunity to elect candidates of their choice) may evidence "packing." In such cases, the excessive concentration of black population may be viewed as "wasting" minority voting power and unnecessarily minimizing minority effectiveness in other districts. *See The Dilemma of the Voting Rights Act*, *supra* n.2, at 1662-63 n.194.

[8] Fracturing is the process by which a minority group which could form a sizeable majority in one district is split into two or more districts where the minorities constitute an ineffective political grouping in each district. *See also infra* n.9; *Gingles v. Edmisten*, No. 81-803-CIV-5, slip op. at 18 (E.D.N.C. Jan. 27, 1984) (three-judge panel), *appeal docketed*, 52 U.S.L.W. 3908 (U.S. June 2, 1984) (No. 83-1968) ("Vote dilution in the *White v. Regester* sense may result from the fracturing into several single-member districts as well as from the submergence in one multi-member district of black voter concentrations sufficient, if not 'fractured' or 'submerged,' to constitute an effective single-member district voting majority").

> an intent to discriminate against blacks *qua* blacks. We believe, however, that under the peculiar circumstances of this case, the requirements of incumbency are so closely intertwined with the need for racial dilution that an intent to maintain a safe, primarily white, district for Senator Joyce is virtually coterminous with a purpose to practice racial discrimination.

Id. at 1109. The court in *Rybicki I* recognized that adjustments of legislative districts merely to preserve incumbencies, where large shifts and manipulation of racial populations were not evident, would not necessarily amount to purposeful racial discrimination. *Id.* at 1110-11 n.81. *See Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966) ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness."); *McMillan v. Escambia County, Florida*, 638 F.2d 1239, 1245 (5th Cir.) ("the desire to retain one's incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks *qua* blacks"), *cert. dismissed sub nom. Jenkins v. City of Pensacola, Florida*, 453 U.S. 946 (1981), *vacated in part*, 688 F.2d 960 (1982), *vacated and remanded*, 52 U.S.L.W. 4397 (1984). Nonetheless, the court found in *Rybicki I* that the evidence of dilution of minority voting strength by manipulation, fracturing and packing established intentional racial discrimination in the redistricting plan because racial discrimination was the necessary accompaniment of the action taken to protect incumbencies. Since it is frequently impossible to preserve white incumbencies amid a high black-percentage population without gerrymandering to limit black representation, it seems to follow that many devices employed to preserve incumbencies are necessarily racially discriminatory. We think there is little point for present purposes in distinguishing discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus.

We have discussed above several examples of the dilution of minority voting strength through manipulation of ward boundaries. Appellants have alleged instances of packing (the "wasting" of black votes through unnecessary concentration, *supra* n.7), in that fourteen of the seventeen majority black wards have black populations in excess of 89%, while only six majority white wards have majorities at comparable levels. Appellants' brief at 31. There are also allegations of fracturing of the black communities on both the West and the South Sides, so that certain black population, which could have been used to form additional black majority wards, was instead split off to form sizeable black minorities within white majority wards.[9]

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[9] *Supra* n.8. Plaintiffs' expert witness, Dr. Hofeller, testified at trial as follows:

> In the construction of the 1981 wards overlay, . . . there are instances in which the predominantly white wards come in and fracture the black communities. You see this in Ward 18, Ward 15, Ward 14, Ward 11, Ward 1, Ward 37 and to some extent Ward 42. Nowhere on the map do you see a compensating reach of a black ward out across the boundary of the neighborhood into the white areas. In this way there could not help but be less black wards created than would be warranted by the population of the black neighborhood.

Tr. 921-22; *see also* Tr. 235 (testimony of Martin R. Murphy identifying fracturing in the 11th, 14th, 18th, 19th, 37th and 22nd Wards).

Another plaintiffs' expert witness, Dr. Philip Hauser, conducted various statistical analyses to demonstrate the disproportionate effect of fracturing on the white, as opposed to black and Hispanic, population. According to his calculations, the odds of a black being placed in a majority-white ward were 4.47 times as great as the odds of a white being placed in a majority-black ward. If only those wards located along the "borders" between the white and black communities are considered, then blacks in those wards were 33.67 times as

(Footnote continued on following page)

The Hispanic communities also allegedly were fractured. We, of course, recognize that the Hispanic population is generally more dispersed than is the black and that it is therefore usually more difficult to create wards with a significant Hispanic majority. *See generally* Note, *Alternative Voting Systems as Remedies for Unlawful At-Large Systems*, 92 Yale L.J. 144, 146 n.16 (1982). Still, fracturing can, and ostensibly has, occurred. Appellants claim that the Northwest Side Hispanic community was split among six wards (the 26th, 30th, 31st, 32nd, 33rd and 35th Wards) with Hispanic populations in these various wards ranging from 24.1% to 57.3%. On the Southwest Side, the Hispanic community of Pilsen was split into two wards (the 1st with 30.7% and the 25th with 52.6% Hispanic population) instead of being left intact, as it might have been, as one ward with an Hispanic population of 72.9%. In addition, the Little Village community, which could have been left entirely within the 22nd Ward with an Hispanic population of 78.8%, was split between the 12th and 22nd Wards with 32% and 64.3% of the total population, respectively. Appellants' brief at 25-26.

Despite these considerable indications of minority voting strength dilution through manipulation, packing and fracturing, which in *Rybicki I* were (we think correctly) held to constitute intentional racial discrimination, we think it is unnecessary to make a formal finding that the 1981 City Council map constitutes intentional racial discrimination. At the time of the *Rybicki I* decision, the finding of remediable vote dilution depended on a determination of intentional discrimination. As noted previously, the 1982 amendments to the Voting Rights Act have eliminated the requirement

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[9] *continued*
likely to be placed in majority-white wards. In both situations (because virtually all Hispanics live in border areas), the odds are 88.68 times as great that an Hispanic would be placed in a majority-white ward as that a white would be placed in a majority-Hispanic ward. Appellants' brief at 27-31; Plaintiffs' exhibits 171, 172, 193, 199, 205; Tr. 742, 779.

of intentional discrimination and relief can be afforded on the basis of a finding of resultant discrimination. This change in the law appears to reflect congressional impatience with the inherently speculative process of ascribing purposes to government actions involving the complex interaction of numerous individuals and conflicting interests. We think it undesirable to undertake this difficult analysis when Congress has rendered it superfluous by amending the Voting Rights Act. Congress, in amending the Voting Rights Act, wisely eliminated the elusive and perhaps meaningless issue of governmental "purpose" from the calculus of vote dilution claims. *See also Major v. Treen*, 574 F. Supp. at 346. There appears to be no difference in the practical result or in the available remedy regardless of how the resulting discrimination is characterized.[10] We therefore shall not explicitly decide

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[10] Plaintiffs assert that if intentional discrimination is found, they will be able to seek additional relief under section 3(c) of the Voting Rights Act. Section 3(c) provides that, if a fourteenth or fifteenth amendment violation is found,

> the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and . . . no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that [it] does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title . . . .

42 U.S.C. § 1973a(c) (1982). Because we believe that continuing court jurisdiction of the redistricting requirements for the aldermanic wards would be neither necessary nor appropriate under these circumstances, the relief actually available to plaintiffs in this case is the same regardless of whether we reach the issue of intentional discrimination. Obviously, a constitutional analysis would be required if relief under section 3(c) were in question. We note, in addition, that the Supreme Court has re-

(Footnote continued on following page)

the issue of a fourteenth amendment violation despite the apparent close analogy between certain of the facts here and certain of those in *Rybicki I*.[11]

IV
Remedy

Having found that the City Council map resulted in racial discrimination and therefore violated section 2 of the Voting Rights Act, the district court ordered the drafting of a new map. The sole basis for the district court's finding of a violation was the city-wide retrogression based on a comparison of the number of black and Hispanic majority and plurality wards in 1980 under the 1970 map with the number of such wards under the 1981 map. *Supra* n.2. The guidelines established by the district court for the redrawing of the map therefore consisted primarily of restoring blacks to a simple majority of the voting age population in nineteen (instead of seventeen)

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[10] *continued*
cently declined to consider the constitutional basis for a challenge to an electoral system when an affirmance on the alternative statutory ground based on amended section 2 would moot the constitutional issues presented in the case. *Escambia County v. McMillan*, 52 U.S.L.W. 4397 (1984).

[11] Because we do not decide the question of intentional discrimination, it is also not necessary for us to consider the complex burden of proof questions presented by the alternative modes of analysis available in proving intentional discrimination in cases involving mixed motive discussed at some length in *Rybicki I*, 574 F. Supp. at 1106-08. *See, e.g., Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977) (use of a two-step analysis in which, once plaintiff shows a discriminatory purpose was one factor in the challenged action, the burden of proof shifts to defendant to show the same result would have occurred absent the discriminatory purpose); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981) (use of a three-step analysis in which the burden of proof shifts back to the plaintiff to demonstrate that the defendant's purported explanation is merely a pretext for intentional discrimination).

wards, the two affected wards being the 37th and 15th (Tr. 4107). The district court also determined that the Hispanics should have four majority wards and one plurality ward (Tr. 4111).[12] The respective compositions of the 22nd, 25th and 31st Wards were considered satisfactory, but the district court ordered adjustments in the 26th and 32nd Wards (Tr. 4112-13).

Perhaps the most significant aspect of the district court's remedy formulation was its determination of what constitutes an effective majority for a minority group within a particular ward. The test of an effective majority is that share of the population required to provide minorities with "a realistic opportunity to elect officials of their choice . . . ." *Kirksey v. Board of Supervisors of Hinds County*, 402 F. Supp. 658, 676 (S.D. Miss. 1975), *aff'd*, 528 F.2d 536 (5th Cir. 1976), *rev'd*, 554 F.2d 139 (5th Cir.) (en banc), *cert. denied*, 434 U.S. 968 (1977).[13] In the case

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[12] We note that a retrogression analysis applied to a minority which had no prior elected representation seems less clearly appropriate than as applied to a minority having a previous history of representation. We think, however, that the district court's determination of liability with respect to the Hispanic wards is correct.

[13] In more practical terms, an effective majority means "a majority of the population substantial enough to allow group choice to be effective." In the case of minority groups, the "minority must constitute more than half of a district's population in order to obtain an effective electoral majority." Note, *Alternative Voting Systems as Remedies For Unlawful At-Large Systems*, 92 YALE L.J. 144, 146 n.13 (1982) [*Alternative Voting Systems*]. *See also White v. Regester*, 412 U.S. at 766; *Whitcomb v. Chavis*, 403 U.S. at 149-50; *Zimmer v. McKeithen*, 485 F.2d at 1304-05 ("where the petitioner can demonstrate that 'its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice,' . . . such districting schemes are constitutionally infirm") (quoting *White v. Regester*, 412 U.S. at 766).

before us, the district court adopted the use of voting age population statistics as the fairest and most equitable criterion for minority group strength in the evaluation of a redistricting plan under section 2 (Tr. 4106). The district court rejected for most wards the use of any majority greater than 50% of voting age population as a threshold for determining an effective majority of blacks or Hispanics. In some of the Hispanic wards the court did set a higher figure to correct for the relatively high number of non-citizens. In rejecting the general use of a greater than 50% majority of voting age population, the court stated:

> there is no statistical or objective evidence in the record that a minority is entitled to or should have more than a majority of the voting age population in order to have a reasonably fair opportunity to vote for candidates of their choice or even to elect candidates of their choice.

Tr. 4109. The district judge also relied on testimony of defendant's expert witnesses that minority groups will register and vote in sufficiently large numbers when the proper incentives are present and that "[i]ntelligence or economic standings in the community" are variables which are statistically unsupported in the record and should not be considered. The district judge therefore chose to

> disregard and discard the rule of thumb that has been talked [sic] by various witnesses that 65 percent of a minority is necessary in order to control a ward or, to put it another way, to give the voters in that ward a fair opportunity to vote for a candidate of their choice.

Tr. 4110-11.

Following the district court's finding of liability, the defendants were thus ordered to draft a new map in accordance with the criticisms and guidelines as articulated by the court, and the district court subsequently approved this map. The only significant changes in this new map for

the black community were the restoration of black majorities in two wards, as follows:

Ward	1970 Map	City Council Map	Court-approved Map
15	66.36 (59.99)[14]	41.69 (34.59)	60.09 (52.6)
37	76.39 (72.42)	36.84 (31.21)	61.65 (56.2)

Appellants' brief at 47; Def. Exs. 1I, 7I and 261I. The court-approved map shows the following changes for the Hispanic wards:

Ward	1970 Map	City Council Map	Court-approved Map
22	62.8 (56.7)	64.88 (59.88)	75.55 (69.0)
25	51.1 (44.9)	52.56 (46.19)	65.37 (59.5)
26	50.7 (41.9)	52.34 (43.68)	58.83 (50.0)
31	53.6 (48.4)	57.26 (52.41)	57.38 (50.6)
32	47.9 (40.2)	47.23 (39.59)	46.3 (38.8)

Appellants' brief at 48; Def. Exs. 1I, 7I and 261I. In the court-approved map, the Hispanics have, as the above table indicates, only 50% of voting-age population in the 26th Ward, although in that ward the court had ordered defendants to provide a population "in the vicinity of a 55 percent majority . . . to accommodate the fact that many of them [Mexicans] are not citizens and haven't had a chance to become citizens" (Tr. 4112-13). The court had also suggested a 54% majority for Hispanics in the 32nd Ward (Tr. 4113), but the court-approved map provides for only 38.8%. Finally, the 31st Ward, which was to have no change according to the trial judge (Tr. 4113), has a reduction from 52.41% to 50.6% in the court-approved map.

In undertaking our review of the remedy ordered by the district court, we take note of the comments in the Senate Report concerning the 1982 amendments to the Voting Rights Act which adopt

[14] The figures in parenthesis are percentages of voting age population ("VAP"), as opposed to percentages of total population ("TP").

> [t]he basic principle of equity that the remedy fashioned must be commensurate with the right that has been violated. . . . The court should exercise its traditional equitable powers to fashion the relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.

Senate Report at 31 (footnote omitted). The Supreme Court has stated, in reviewing a district court decree in a voting rights discrimination context, that "the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965). In *Connor v. Finch*, 431 U.S. 407 (1977), the Supreme Court articulated the standard of review as

> whether the District Court properly exercised its equitable discretion in reconciling the requirements of the Constitution with the goals of state political policy. . . . In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner "free from any taint of arbitrariness or discrimination."

Id. at 414-15 (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964)).

Under this exacting standard, we find that the court-approved map has not provided an adequate remedy for the Voting Rights Act violation because it does not eliminate, in accordance with well-accepted principles of redistricting, the illegal dilution of minority voting strength accomplished by the City Council map. The court-approved map does not grant to minority citizens a reasonable and fair opportunity to elect candidates of their choice as that concept has been understood in redistricting jurisprudence. We must, therefore, remand to the district court for reconsideration of an adequate and appropriate remedy.

It is not, however, the proper role of this court to formulate its own redistricting plan or to dictate to a district court minute details of how such a plan should be devised. Nonetheless, we feel we must address certain issues and establish certain guidelines to assist the district court in determining a suitable remedy. These guidelines incorporate principles which the district court should carefully consider and attempt to implement. We are fully aware, however, that some deviation from recommended norms may be justified by the existence of special circumstances. Upon remand, the district court in its discretion may find it necessary to take additional evidence with respect to recent political and sociological changes which may affect our present analysis of these guidelines.

1. *Use of Voting Age Population Statistics*: The district court adopted voting age population statistics as the best measure of minority voting strength. This is perfectly understandable since being of age is a legal prerequisite to voting. Because minority groups generally have a younger population and, consequently, a larger proportion of individuals who are ineligible to vote, *see infra* n.16, courts formulating redistricting plans usually add a 5% increment to a majority based on total population figures. When voting age population data are available and the district court accepts them as reliable, it seems reasonable for such data to be used in evaluating minority voting strength instead of merely using a standard adjustment to total population. *See City of Rome v. United States*, 446 U.S. 156, 186 n.22 (1980) (voting age population statistics are "probative because they indicate the electoral potential of the minority community"); *City of Port Arthur, Texas, v. United States*, 517 F. Supp. 987, 1015-18 (D.D.C. 1981) (three-judge panel) (using voting age population statistics). In the case before us, a cursory examination of the voting age population figures available in the record demonstrates that the discrepancy between total population and voting age population for minority groups in the Chicago area is often greater than the 5%

commonly employed to compensate for the disparity.[15] As more reliable data become available, it is not unreasonable for courts to use this data instead of employing 5% as a uniform corrective.

2. *Use of a Super-Majority to Define a Majority Ward*: The district court expressly rejected the use of "super-majorities" or of any corrective to adjust for the usually lower voter registration and turn-out patterns of certain minority population groups. We believe that the district court's failure to consider carefully all of the factors which are present here as in comparable situations and which have led other courts to employ such a corrective (frequently 65% of total population or 60% of voting age population or some variation of these guidelines) was an abuse of discretion under the particular circumstances before us. We see nothing in the findings of the district court or in the record on appeal which adequately addresses the widely accepted understanding, which will be discussed in greater detail below, that minorities must have something more than a mere majority even of voting age population in order to have a reasonable opportunity to elect a representative of their choice. There is simply no point in providing minorities with a "remedy" for the illegal deprivation of their representational rights in a form which will not in fact provide them with a realistic opportunity to elect a representative of their choice.

The experience of many redistricting plans has lent weight to the understanding that some form of corrective, even beyond the use of voting age population statistics,

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[15] For example, in Ward 15, under the court-approved map, blacks constitute 60.09% of the total population but only 52.6% of the voting age population, a differential of 7.49%. In Ward 37, under the court-approved map, blacks constitute 61.65% of the total population and 56.2% of the voting age population, a differential of 5.45%. Def. Ex. 261I. The variation from the 5% figure is not great and the results may be different in other wards, but it is certainly acceptable to use actual statistics in those circumstances where they are available and reliable.

should be employed as a guideline in defining a minority district. The record here does not demonstrate that the district court adequately considered voter registration and turn-out patterns in the Hispanic and black communities in rejecting the use of any majority greater than 50% of voting age population, and we think the district court's remedy must therefore be reconsidered. In addition and very importantly, since, before redistricting was undertaken, minority groups had achieved majorities exceeding 65% in certain key wards, the provision of supermajorities in those wards would not be inequitable.

Just as minority groups have a younger-than-average population, they also generally have lower voter registration and turn-out characteristics.[16] This is not something which can be fully rectified by good motivation and organization, although the existence of these certainly helps. Some of the problems, at least, spring from circumstances of low income, low economic status, high unemployment, poor education and high mobility. It is only common sense that highly mobile populations are less likely to vote because of, *inter alia*, failure to meet residency requirements. In addition, as the district court actually noted in this case (Tr. 4112-13), the Chicago Hispanic population on the Near Southwest Side is composed of a significant proportion of Mexicans who have not yet had an opportunity to become citizens.[17] In recog-

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[16] According to the 1980 census statistics, 69.7% of whites, 60% of blacks and 57.0% of Hispanics are of voting age. The percentages of individuals reporting they were registered to vote in 1980 are: whites-68.4%; blacks-60.0%; Hispanics-36.3%. The percentages of individuals reporting they had actually voted in 1980 are: whites-60.9%; blacks-50.5%; Hispanics-29.9%. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1981, 25-26, 499 (1981).

[17] The Hispanic population of the Near Northwest Side wards is apparently predominently Puerto Rican rather than Mexican; Puerto Ricans are, of course, citizens.

nition of this fact, the district court directed defendants to provide a majority of Hispanics in the vicinity of 55% of voting age population for the 26th and 32nd Wards, although the court-approved map in fact provides for an Hispanic population of only 50.0% and 38.8% in the 26th and 32nd Wards, respectively.

Appellants here ask that, in addressing the illegal retrogression identified by the district court, we apply to the redistricting plan an analysis based not merely on city-wide retrogression but on retrogression within wards. According to this approach, any retrogression in the size of a black majority or plurality within a ward should be eliminated and the size of the minority population restored to what it was in 1980 under the 1970 map. The appellants point out that this approach has been adopted in *Moore v. Leflore County Board of Election Commissioners*, 502 F.2d 621, 624 (5th Cir. 1974) (three-judge panel) (reduction of black majorities from the 69-78% range to the 55-60% range found impermissible because extent of each majority was less than in pre-redistricting plan) and *Buskey v. Oliver*, 565 F. Supp. 1473, 1482-84 (M.D. Ala. 1983) (reduction of black majority within one ward from 84.2% to 68% held to constitute retrogression and a section 2 violation). In the 37th Ward, a full rectification of retrogression would mean the restoration of the pre-redistricting 76.4% black majority and, in the 15th Ward, of the 66.4% black majority. Appellants' brief at 80.

There is a certain equity in appellants' argument, but we think it is too inflexible an approach to the practical needs of redistricting. We do believe, however, that those engaged in the redistricting process must keep clearly in mind that, if the original majority is not restored, then the most relevant change is one *downward* from the pre-redistricting percentage previously achieved by the minority group rather than one *upward* from the map formulated by the City Council action, which was found to be in violation of the Voting Rights Act. From this perspective, the provision of a majority exceeding 50% of

voting-age population would certainly not seem inequitable.

We next turn to a consideration of other principles or guidelines which a district court might observe in fashioning an appropriate remedy. The most important principle is that, upon remand, the district court must carefully consider and evaluate the data concerning voter registration and turn-out in the black and Hispanic communities to determine the practical need for a super-majority of the respective minority groups in order to give the minorities a reasonable and fair opportunity to elect candidates of their choice.

The district court must first gather and evaluate whatever statistical and other types of evidence are available in an effort to determine their accuracy, reliability and significance in establishing historical and recent trends in the electoral patterns of the black and Hispanic communities.[18] The district court must then determine the need, under the particular circumstances of the City of Chicago, for a corrective and, if so, the extent of the corrective, which is required to afford blacks and Hispanics a reasonable and fair opportunity to elect a candidate of their choice. The district court, following Judge McMillen's reasoning in this case, could also determine that those Hispanic wards on the Southwest Side with large admixtures of non-citizens should have their effec-

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[18] Examples of the sort of statistics which a district judge might wish to evaluate for their reliability and significance were provided by both the defendant-appellee in its rehearing petition, although not in its original briefs and argument, and by the plaintiffs-appellants in their answer. In its rehearing petition, the defendant included a chart with data on black voter registration and turnout for the elections from 1979 to 1982. Rehearing Petition at 12. While it would be within the district court's discretion to accept, reject or utilize such statistics in a modified form, the district court would be required to explain and justify its reliance on such statistics and on the numbers on which they are based.

tive Hispanic majorities calculated on the basis of only those individuals who are eligible, as citizens, to vote.[19]

It, of course, remains ultimately within the discretion of the district court to determine what an appropriate corrective should be based upon analysis of election data, if such data can yield a meaningful and persuasive result. This approach, if there is enough reliable information available to support it, may yield the best determination of what is required to afford minority populations a reasonable opportunity to elect candidates of their choice. We note, however, that judicial experience can provide a reliable guide to action where empirical data is ambiguous or not determinative and that a guideline of 65% of total population (or its equivalent) has achieved general acceptance in redistricting jurisprudence.

A guideline of 65% of total population has been adopted and maintained for years by the Department of Justice and by reapportionment experts and has been specifically approved by the Supreme Court in circumstances comparable to those before us as representing the proportion of minority population reasonably required to ensure minorities a fair opportunity to elect a candidate of their choice. This figure is derived by augmenting a simple majority with an additional 5% for young population, 5% for low voter registration and 5% for low voter turn-out, for a total increment of 15%. This leads to a total target figure of 65% of total population. Obviously if voting age population statistics are used, 5% would drop out of the formula, leaving something in the vicinity of 60% of voting age population as the target percentage. Appellants argue, in addition, that a further 5% should be allowed in certain Hispanic wards on the Southwest Side of largely Mexican-American composition to adjust for the numbers

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[19] We approve the principle adopted by Judge McMillan that there should be an appropriate corrective for non-citizenship. We leave to the discretion of the district court on remand the specific form and magnitude of the corrective.

of non-citizens; this factor was accepted in principle by the district court although apparently not followed in practice.

During the trial, witnesses for both sides testified that 65% of total population is a widely recognized and accepted criterion in redistricting formulations. Kimball Brace, one of defendant's expert witnesses, stated:

> One of the factors that is involved in any sort of redistricting activity and in the general knowledge of an experienced redistricter is that there are some overall criterias [sic] that have been laid down in the redistricting field and what is necessary to insure a minority district. Those were outlined at the outset in the Williamsburg case in the early 1970's. Generally it talks about a 65 percent minority population. That is derived from the 50 percent total population, adding five percent for each of the three factors that are voting age population, because minorities tend to have a lower voting age population, lower registration patterns and a lower turnout pattern.

Tr. 3665. This same witness also testified that consideration of voter turn-out and registration patterns is useful in the redistricting process in order to ensure that minorities are represented. Tr. 3664-65. One of plaintiffs' witnesses, then Congressman Harold Washington, testified that, although a 65% majority does not always ensure the election of a minority candidate, there is an historical pattern, illustrated by the 6th, 8th, 9th, 16th and 17th Wards, of the election of a minority candidate once the minority population approaches the 65%-70% range within a ward. Tr. 2204.[20]

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[20] Another of plaintiffs' witnesses, Dr. Hauser, testified that the 65% guideline does not guarantee that a particular minority group will be able to elect a candidate of its choice in any particular circumstance (Tr. 808), and the district judge relied on this uncertainty, to some extent, in rejecting the use of the 65% figure. This uncertainty may be illustrated by the result of the

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Numerous courts have either specifically adopted or tacitly approved the use of this 65% figure. It was referred to approvingly in the recent Chicago state legislative redistricting decision, *Rybicki I*, 574 F. Supp. at 1113 n.87, and the congressional redistricting decision, *In re Illinois Congressional Districts Reapportionment Cases*, No. 81 C 1395, slip op. at 19 (N.D. Ill. Nov. 23, 1981), *aff'd sub nom. McClory v. Otto*, 454 U.S. 1130 (1982). The 65% figure was adopted in *State of Mississippi v. United States*, 490 F. Supp. 569 (D.D.C. 1979) (three-judge panel), *aff'd*, 444 U.S. 1050 (1980), where the court stated that

> [i]t has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice.

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[20] *continued*
March 1982 primary election for the new Illinois State Senate District 18, which was redrawn as a result of *Rybicki I* to include a 66% minority population. In that election black candidates were unsuccessful in their efforts to unseat the white incumbent Senator. *Rybicki II*, 574 F. Supp. at 1149 n.4. This example illustrates that application of the 65% figure does not necessarily have the effect either of automatically disenfranchising the remaining 35% of the population or of removing from the 65% of the population the appropriate incentives to organize, register and turn-out to vote. It is still easy to lose even with a potential 65% of the vote. The 65% guideline is intended to address the electoral facts as they appear to exist now and to compensate primarily for certain electoral characteristics which cannot be changed over a short period of time. As these characteristics do change or have changed, however, judicial guidelines may have to be modified accordingly. *See also infra* n.21 and accompanying text. In the interim, though, the combination of expert opinion and judicial precedent, which will be discussed below, suggest that we continue to employ an adequate corrective (such as the frequently cited 65%).

490 F. Supp. at 575. The Supreme Court, in *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144 (1977), held that "it was reasonable for the Attorney General to conclude in this case that a *substantial* nonwhite population majority—in the vicinity of 65%—would be required to achieve a nonwhite majority of eligible voters." *Id.* at 164 (emphasis in original). *See also Gingles v. Edmisten*, No. 81-803-CIV-5, slip op. at 24-25 and n.21 (E.D.N.C. Jan. 27, 1984) (three-judge panel), *appeal docketed*, 52 U.S.L.W. 3908 (U.S. June 2, 1984) (No. 83-1968); *The Dilemma of the Voting Rights Act*, *supra* n.2, at 1615 n.3; *Alternative Voting Systems*, *supra* n.13, at 146 n.13.

In light of these expert opinions, judicial precedents and the policy and practice of the Department of Justice in administering the Voting Rights Act, we believe that, when reliable, determinative statistics are not available, in scrutinizing a redistricting plan for fairness to minority groups, the district court should give careful consideration to the 65% figure or some variation of it. As we have indicated, of course, emerging changes in sociological and electoral characteristics of minority groups and broad changes in political attitudes may substantially alter, or eliminate, the need for a corrective. The 65% figure, in particular, should be reconsidered regularly to reflect new information and new statistical data.[21]

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[21] For example, we note that the Rev. Jesse Jackson's 1984 presidential candidacy has apparently stimulated black registration and turn-out nationally. More specific to Chicago, we understand that the November 1982 gubernatorial election in Illinois and the 1983 Chicago mayoral election indicated a marked increase in black registration and turn-out. If these and other elections should demonstrate a significant and consistent change in voting behavior in Chicago *applicable to aldermanic elections*, there would have to be a corresponding change in redistricting practices and legal standards, although the results of these elections may not be adequate to justify an abandonment or modification of previously accepted guidelines

(Footnote continued on following page)

In remanding this case for reconsideration of the appropriate remedy under the principles enunciated here, we recognize that at least two black majority wards, and possibly a third, will need to be redrawn in order to eliminate the retrogression of the court-approved map. These wards are the 15th Ward, the 37th Ward and possibly the 7th Ward.[22] In the case of the 15th and 37th Wards, the adoption of a 65% guideline, for example, might be fairly viewed as a limitation on restoration of the pre-redistricting black majorities (approximately 66% and 76%, respectively). This perspective would view a super-majority in these wards as a fair antidote to retrogression rather than as an "artificial" supplement to a 50%

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[21] *continued*
at this juncture. It initially remains within the discretion of the district judge, however, to determine when such a consistent and reliable pattern has emerged and when adequate and trustworthy statistics concerning minority voter registration and turn-out are available. At that juncture the application of an adequate corrective may be considered or reconsidered.

[22] The statistics relating to blacks for the 15th and 37th Wards were previously presented. *Supra* n.14 and accompanying text. The percentages of black population for the 7th Ward are as follows:

1970 Map	City Council Map	Court-approved Map
62.6 (63.1)	58.4 (58.0)	58.4 (58.0)

Def. Exs. 1I, 7I and 261I. The district court evidently did not require any alteration in the composition of the 7th Ward under the City Council map apparently because the 58.4% (or 58% of voting age population) black majority met its criterion for a black majority ward. Here, however, we think tentatively that the prescribed adjustment may be keyed to a restoration of the 62.6% or 63.1% of voting age population which was the black population actually achieved under the 1970 map. Under the particular circumstances applicable to the 7th Ward, there appears to be less justification for specific consideration of a goal of 65% of total population (since this figure had not been achieved under the 1970 map). However, we leave the ultimate details of this adjustment to the discretion of the district court.

majority. It is more difficult to determine precisely which wards in the Hispanic community will need adjustments to satisfy the appropriate criteria, but those requiring further scrutiny by the district court include the 25th, 22nd, 26th, 30th, 31st, 32nd, 33rd, and 35th Wards with possibly some attention to the 1st and 12th Wards.[23]

3. *City-wide Retrogression*: In accord with our earlier discussion of city-wide retrogression in the number of minority wards as constituting a section 2 violation, we consider that the number of wards with a minority population majority should be restored to the number which existed in 1980 under the 1970 ward map. This means nineteen black majority wards and probably four majority Hispanic wards. There is some authority that, in terms of general principles, this is not necessarily the maximum permissible remedy but instead may be nearer the minimum. *See City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 1012 n.149 (D.D.C. 1981) (three-judge panel) ("it is reasonable to fix the *minimum* level of representation under the new plan at the level achieved by the same voters under the former plan") (emphasis added). We believe, however, that the remedy

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[23] The statistics for the Hispanic population of the latter five of these wards were previously presented. *Supra* n.14 and accompanying text. Those for the other wards are as follows:

Ward	1970 Map	City Council Map	Court-approved Map
25	51.1 (44.9)	52.6 (46.2)	65.4 (59.5)
1	35.6 (31.5)	30.7 (27.1)	20.6 (18.1)
22	62.8 (56.7)	64.9 (59.9)	75.6 (69.0)
12	11.4 (9.3)	32.0 (25.8)	19.3 (15.7)

Def. Exs. 1I, 7I and 261I. If, as under one approach, see note 22 *supra*, correction of retrogression were keyed, or limited, to percentages actually achieved under the 1970 map, there might be some question what more can be done for the Hispanic wards on a retrogression basis. We believe, however, that the Hispanic wards may be viewed in other than a retrogression context, as will be discussed below.

we have discussed is adequate here. In any event, the precise remedy must necessarily be a matter for the discretion of the district court. Of course, certain aspects, such as the precise configuration of particular wards, are more discretionary than others.

The situation of the Hispanic population is considerably more complex than that of the black population. The Hispanic population is generally not nearly as concentrated in segregated areas as is the black population, although there are cohesive Hispanic communities such as Pilsen and Little Village which, if left intact, would form significantly high concentrations of Hispanic voters. Hispanics have occupied a much less visible role in the political process in Chicago than have blacks and, until the 1980 census, little attempt was made even to count Hispanics as a distinct ethnic minority.[24] Therefore, in order to remedy effectively discrimination against Hispanics, it seems necessary to go beyond the strict calculus of the retrogression rule by attempting to provide four Hispanic majority wards (two on the Southwest Side and two on the Northwest Side) which would have a concentration of Hispanics greater than that of any individual wards in 1980 under the 1970 map. *See supra* n.2. Since the 1970 map apparently fractured the Hispanic community, limiting the remedy for Hispanics to their situation under the 1970 map might merely perpetuate the vote dilution of the past. Therefore, instead of merely applying the nonretrogression rule to the Hispanic population, the district court should examine whether four wards can be created, each with a sufficiently large majority of Hispanics to provide the Hispanics with a reasonable opportunity to elect candidates of their choice. Of course, neither Hispan-

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[24] Stip. 48. This failure of the 1970 census to consider the Hispanics as a discrete ethnic minority would also cast some doubt on the legitimacy of using the 1970 ward map as an indicator of the voting strength to which the Hispanic community is entitled in the 1980's. *See also supra* n.1.

ics nor blacks have a statutory or constitutional right to proportional representation.

The appellants also allege that there are additional errors in the court-approved map and ask that we order these errors be remedied on remand. First, appellants point to their allegations of fracturing of the black and Hispanic communities and ask that "some or all of the wards that touch the black-white border" be redrawn as well as many of the Hispanic wards. Appellants' brief at 79-80. Second, as previously discussed, appellants ask that retrogression within individual wards be remedied, including the restoration, for example, of the 49.37% plurality in the 18th Ward, as well as the full restoration of the pre-redistricting majorities in the 37th, 15th and 7th Wards.

We, however, believe that this attempt to rectify retrogression fully "within wards," in the particular circumstances of this case, is unjustified. We believe there is no vested right of a minority group to a majority of a particular magnitude unrelated to the provision of a reasonable opportunity to elect a representative under well-recognized principles. In addition, provision of majorities exceeding 65%-70% may result in packing. The mandate of section 2 of the Voting Rights Act is that minorities must be given a reasonable and fair chance to elect candidates of their choice. As previously stated, expert opinion and judicial precedent indicate that the 65% guideline (or a statistically supportable alternative corrective) is adequate to ensure this reasonable opportunity. The use of an objective guideline to fulfill the purposes of the Act also removes the federal courts, to the extent compatible with maintenance of constitutional and statutory rights, from detailed and subjective scrutiny of what is essentially a local political process. While the "fracturing" of a cohesive community may be undesirable and, under some circumstances, unlawful, we are not authorized to correct it here unless the reasonable opportunity of a minority to elect representatives of its choice is directly at stake. A similar limitation applies to our power to mandate that

the size of a minority group within a particular ward never be decreased. These approaches should be followed in order to achieve the goals of the Act; broad and inflexible strictures against "fracturing" or reduction of majorities within individual wards, which have no direct electoral effect, might impose an impossible burden on the drafters of a redistricting plan in what is, in any event, a difficult task.[25]

In summarizing the guidelines which the district court should apply in fashioning a suitable remedy, we note the following criteria. First, the retrogression in the number of wards in which blacks have a reasonable opportunity to elect a candidate of their choice should be eliminated by establishing an effective black majority in at least nineteen wards. The district court should determine, in its discretion, whether it is possible to create four wards with an effective majority of Hispanics. Second, the district court must seriously consider the factors underlying the formation and definition of an effective majority in the black and Hispanic wards. To do so, additional evidence—primarily statistical but including other types of data—may be required, which the district court must then evaluate for reliability and significance. Depending on the district court's evaluation of these data, it may decide to adopt a corrective based directly on these statistics or some other uniform corrective such as the widely accepted 65% guideline. The use of a corrective should not be rejected for reasons which fail to take account of the electoral facts and the need to provide *effective*

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[25] Of course, in this very case, where the facts make it appropriate, we are proposing a remedy for the Hispanic plaintiffs which centers on the elimination of "fracturing." "Packing" was an important consideration in the plan modification sought in *Rybicki II*, 574 F. Supp. at 1149, 1154-58. In addition, retrogression within a voting district might well under many circumstances require a remedy. All these matters, we believe, should be viewed within the totality of the circumstances.

majorities. Failure to consider these factors fully is to leave the violation of voting rights essentially unremedied. Where voting age population statistics are available and found by the district court to be reliable these may also be used in place of total population statistics.

For the foregoing reasons, the decision of the district court is affirmed in part, reversed in part, and remanded to the district court for reconsideration of the remedy in a manner consistent with this opinion. Circuit Rule 18 shall apply. Pursuant to Circuit Rule 26, costs are awarded to the plaintiffs-appellants.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[4077]* IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	)	
vs.	)	No. 82 C 4085
CITY COUNCIL OF THE CITY OF CHICAGO, et al., *Defendants.*	)	

Before the HON. THOMAS R. MCMILLEN, on Tuesday, December 21, 1982, at the hour of 2:00 o'clock p.m.

The trial resumed pursuant to adjournment.

APPEARANCES:

MR. JEFFREY D. COLMAN
MR. ROBERT T. MARKOWSKI
MS. JULIE C. REYNOLDS
MR. RICHARD H. NEWHOUSE, JR.

MR. JUDSON H. MINER
MS. BRIDGET ARIMOND

MS. VIRGINIA MARTINEZ
MR. JAMES P. CHAPMAN
MR. ROBERT J. ZAIDEMAN
MR. JUAN CARTAGENA

* Numbers in brackets refer to the pagination of the Official Court Reporter's transcript of proceedings.

MR. LAWRENCE J. MOSS

MR. ROBERT S. BERMAN

MR. WILLIAM J. HARTE
MR. JEFFREY B. WHITT

MR. MICHAEL LEVINSON

[4078] THE CLERK: 82 C 4085, Mars Ketchum, et al., vs. City Council.

MR. COLMAN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. HARTE: Good afternoon, your Honor.

THE COURT: Are you on your feet in order to state your presence here or some other purpose?

MR. COLMAN: No, just to acknowledge our presence, your Honor.

THE COURT: Well, fine, glad to have you.

I should, perhaps, ask if the Pillman intervenors are represented here or whether they are still interested in this matter.

MR. MOSS: Yes, your Honor, we are. As we represented earlier, the Pillman intervenors have reached an agreement with the City Council. We are still waiting to work out some of the language with Mr. Harte. We plan to enter a consent judgment as soon as we have finished up that language.

THE COURT: I gather the matter is in the same posture as it was the last time we were together.

MR. MOSS: That is correct, your Honor.

THE COURT: I am not going to, therefore, make any decision with respect to that particular part of the case.

Since our last meeting, ladies and gentlemen, I have had an opportunity to review in greater detail my [4079] trial notes and many of the exhibits. The arguments that you gave are recorded also in my notes and I have reviewed those along with the briefs which I have read again.

As you know, I had not seen the rebuttal deposition of Professor Thisted which I have now read. I would have sustained a good many of the objections that the defendant made. I think the first 29 pages are objectionable. From there on most of the objections go to specific questions or specific issues. I think, perhaps, those objections and other objections to exhibits that we have, perhaps, should be ruled on after I have made a decision so you will be able to, perhaps, advise yourselves as to which objections you really feel are essential to a determination of the case.

I am, therefore, not going to go through the 160-some pages or 160 pages of Professor Thisted's deposition but I will say that the weight that I gave to it is somewhat less than the weight I gave to the experts who testified for the defendants. Although, I think, to a certain extent his comments and his criticisms of the defendants' experts detract somewhat from the weight that might be given to those expert opinions.

The reason that I would sustain several of the objections and the first 29 pages is primarily because they are nothing more than cumulative evidence and [4080] repetitive opinions of those that were given on direct testimony by the plaintiffs' expert witnesses. I do not consider that as proper rebuttal, nor is it necessary.

Professor Thisted also lacks some qualifications to express some of the opinions which he did. I minimized his testimony somewhat because of his lack of experience and expertise. However, I would not discard any of the expert opinions by any of the witnesses who testified.

Obviously, the Court can take expert opinions on these questions and get completely contrary expressions of opinions and views from well-qualified individuals, well-qualified statisticians, well-qualified professors, experts in various fields.

I have generally come to the conclusion that this is not really a statistical case or an expert opinion case and that the opinions that have been given by the experts go to the ultimate issues that I will discuss a little bit later and

not to the detailed statistical analyses that they made. They were helpful and they have been regarded and given some weight. I would not say that any of the experts testimony, in my opinion, is completely of no probative value or of no help in deciding the case.

[4081] The question of redistricting a city the size of Chicago with the number of wards that we have in the City and the rather startling population changes and population movements that have occurred over the last ten years make the task of redistricting a very difficult and a very delicate one to perform.

I think we all understand that within the one man/one vote requirement a large number of various maps could be drawn. We have, in the case here, at least five which do comport with the one man/one vote requirement. The difficulty is that that is not the only requirement that is imposed upon the City Council or upon the Court.

As far as the work of Commissioner Murphy and Alderman Keane is concerned, it conformed to the one man/one vote requirement absolutely perfectly. I do not think anyone contends that there is any violation of that principle. If anything, I would say that, perhaps, they overdid it to the extent that they overlooked some of the other redistricting requirements and principles that have emanated from the various cases on the subject.

As I said at the close of the plaintiffs' case, however, it is my finding that their principal and, perhaps, sole objective over all was to produce a result which could be enacted or adopted by the City Council as it was then constituted. That was their assignment and that is what they [4082] did in general outline. Both of them gave complete fidelity to the one man/one vote principle but because of the practicalities of the situation, that is, the necessity of obtaining a map which would be adopted by the City Council, they obviously had to make other adjustments in the configuration of the wards and apply other tests.

Now, as I indicated at the close of the plaintiffs' case, I felt and I found that the plaintiff did make out a prima

facie case as far as the Hispanic and the black minorities were concerned. That case, in my opinion, is primarily a case based upon a large change of population in the City of Chicago, and the movement of the minority population, particularly the black populations, into other areas of the City of Chicago which dictated that not only would the configuration of many wards have to be changed but also, at least, on the surface and prima facie made it appear that the representation of the minorities would have to be changed from what it had been over the past ten years.

However, in the same prima facie case of the plaintiffs the process which was followed by the City Council and before them by former Alderman Keane and Commissioner Murphy made it appear quite clearly to me that racial discrimination was not the reason for the changes that occurred in the map-making process. In addition to racial considerations, I should add, Hispanic or language minority [4083] consideration.

The motivating reason for the adoption of the 1980 redistricting map by the City Council, in my opinion, was to preserve the incumbencies of those members of the City Council who were voting on the map. It was not based on the intent or purpose of discriminating against any minority group, particularly in a group of the plaintiffs, and therefore it was my belief, although not expressed specifically as to the City Council or the Board of Election Commissioners, that the prima facie case which the plaintiffs had made at that stage was also rebutted by the showing that the real motivation for the adoption of the 1980 map was preservation of incumbency, preservation of the turf of those who voted on it. That is evidenced also by the fact that the vote was heavily in favor of the plan even by the black members of the City Council. Only seven votes were cast against the plan as it was finally adopted. My recollection is that only two or perhaps three of those votes were black aldermen. Although, I have not checked that particular statistic. Obviously, whatever the number is, the vast heavy majority of the black aldermen voted in favor of the plan, which to me

is an indication, among other things, that the motivation of the Council was not discrimination, was not intentional unfairness to any minority, particularly black or Hispanic, and therefore did not violate either the Fourteenth or Fifteenth Amendment to the Constitution of the United States.

[4084] I might add that if it were the law that voting for one's incumbency or for one's ward which is represented by an alderman in some way violates the constitution by that act alone, then we would find the courts involved in redistricting almost every plan where there has been a change of population or movement of population.

In other words, one has to realize the practicality of the situation and that is to get a redistricting plan through the legislature, in this case the City Council, as the very first step. If that is the first step before the court is going to have to intervene in the process, we are going to have courts in redistricting cases almost every time they come up except for those localities where there is very little change in population or movement of population. That is merely an aside but it is one of the practicalities of the situation that confronts us in this kind of a case.

I think, also, since the Council was voting for its turf and for the turf of the individual members of the Council and did so within the confines of the constitution, its acts and its redistricting is entitled to great weight and great deference on the part of the Court. A legislative act which is done constitutionally and done within the strictures of the local law and federal law as well should [4085] not be set aside by a court except for very good and convincing reasons. I believe that an ordinance of this kind, therefore, is entitled to great deference and a great respect. It shoud not be changed or the court should not inject itself into a redistricting process without good cause and convincing evidence.

I might say, although we get a little bit ahead of the constitutional issue, that it is my opinion and my finding that the process which the City Council followed did not violate the due process clause, did not violate the rights

of the public to participate or to know what was being done. Granted the process was done in a relatively short time and granted that there were no extensive public hearings, although there was one public hearing where the public was entitled and did participate, Congress has not laid down any particular method for adopting redistricting plans and neither has the Supreme Court. I am not even aware of any lower court decision that has set aside a redistricting plan because of the process that was followed in adopting the plan. Although, I would certainly agree with the plaintiffs that if the plan had been conceived and adopted completely in secrecy without any opportunity for the public or for minority organizations or other groups to participate, that would be evidence of unfairness and, at least, prima facie evidence of a violation of some [4086] constitutional right.

The Council did what it had to do. First of all, it was relying upon experts to draft up the original proposal, namely, former Alderman Keane and Commissioner Murphy, and then it was relying upon the incumbents to monitor and examine the districts that those two gentlemen had devised for them.

At the point when the plan came out of Messrs. Murphy and Keane's work it was promulgated to the members of the Council. It was not promulgated in the form that, perhaps, the plaintiffs might have preferred and it was not promulgated in a completely integrated form but the information was there and it was known to the public. It was known to the representatives of the various wards as they then existed and the various minority organizations that were interested in the participation. Then the matter was submitted not only to public hearings but submitted to the City Council on two separate occasions and was amended on at least 40 instances and eventually became law just before the deadline was reached for adopting such an ordinance.

So that under the circumstances, although it was not what you might call a completely open process where everyone had ample opportunity over a relatively long

contentions that the plaintiffs have made but that, I think, is the principal one and one I think in which the weight of the evidence supports the plaintiffs' position.

Now, I know Mr. Harte argued and it is a fact—there is no disputing it—that when you place the 1980 population on the 1970 ward configurations, we have an artificial pattern, an artificial distribution of population within wards and the wards are not constitutionally [4104] constructed by the time 1980 comes around. That is inevitable when you have the same kind of population changes that have occurred in the last ten years in the City of Chicago but I don't think that answers the question.

I think that the blacks and the minorities are entitled to the population results and the population dispersion that has occurred haphazardly, perhaps, but nevertheless exists in 1980, and that means that 19 wards have become majority black wards by the time the City Council was going to redistrict. Now, there weren't 19 alderman. The reasons for that are clear from the record. But it is also undisputed that there were 19 wards under the 1970 configuration which were rather substantially black majority wards.

The blacks, in my opinion, by 1979, and particularly by 1980, had acquired a status as a minority group which entitled them to have representation in 19 wards in the City of Chicago even though the 19 wards that we are talking about in 1980 were not constitutionally constructed or constitutionally in conformance with the one man/one vote requirement of the Supreme Court.

I find that as a matter of equity the black minority population of the City of Chicago should have 19 black majority wards. Now, that is not proportional representation but that is voting strength and that is a [4105] matter of fairness. Even though the distribution that existed when you superimpose 1980 population on 1970 ward lines is fortuitous, nevertheless, it happened and that is the way the wards were when the City Council came to vote on the subject.

I think the exhibit that I found of most help in that particular respect was Plaintiffs' Exhibit 143, which is Tab 17 in the notebook that they gave to me. It is perfectly clear from that tabulation there were 19 heavily majority black wards on the 1970 lines.

Exhibit 143. I do not know whether these tabs are linked to anything except the notebook, which I have here. I guess they don't but the exhibit numbers do.

Now, Plaintiffs' Exhibit 142 shows that when the City Council finished with this redistricting on November 30th there were only 17 black majority wards. There was one black plurality ward—I think that was the 1st, let's see—that was the 1st Ward—and 17 black majority wards. There were no black plurality wards on Exhibit 153—yes, there was. Excuse me. I do not have the right number here. That is 153. It looks like 158 on there but I think it is 153, Tab 23. It is entitled "Voting Age Population" on the 1981 map. And still on the voting age breakdown which in my opinion is fairer than gross population figures, there were still only 17 black majority wards on the City Council's map and one black plurality ward. That black plurality ward, again, was the 1st Ward. I won't go over the numbers because the exhibit speaks for itself.

[4106] I should say I do not criticize the City Council for not using voting age figures—and I will get to that in more detail when we get to the question of the Hispanic case. In any event, the voting age figures, in my opinion, since they are now available and actually were available when the City Council finally voted, are the fairest way to analyze whether or not a map is fair and equitable to any particular minority. I know the Supreme Court has emphasized total population but total population is not the way people vote. People do not vote if they are two or three years old or even if they are 17 years old. So, voting age population, in my opinion, is the criterion on which a redistricting plan should be evaluated under Section 2 in the issue of fairness and equity to the minority groups.

period of time to express their views, neither was it a closed process where there was no chance for input from the public or from the individual alderman.

[4087] I might say in that respect that the way in which the plan was promulgated to the aldermen and to the City Council foreshadowed the likelihood that the plan would represent the desires of the incumbents and be fairly certain to protect their chances of reelection or serving on the City Council in the future. As I said before, I can't see that that is a violation of any particular constitutional right or to the extent, at least, that it should cause a new plan to be imposed by the Court.

I had another point I was going to mention at that stage but perhaps it will occur to me as we get further along.

In any event, I find for the defendants with respect to any alleged violation of the Fourteenth or the Fifteenth Amendment because of the fact that evidence of purposeful discrimination, invidious discrimination or intentional discrimination against either the black or Hispanic minorities is purely a matter of inference from the bare population figures in the record and has been overcome by the clear evidence of the intent and purpose under which the ordinance was adopted.

I might say also in passing, once again, that it is very difficult to separate the political considerations and the other constitutional considerations in this case. As everyone knows, the Supreme Court on many occasions has told the courts of lower jurisdiction to refrain from [4088] becoming involved in political issues, to refrain from attempting to balance out the voting powers of political parties or minority parties or any other political considerations that can arise ever since the courts have been asked to do that. Yet what we really have here is a power struggle between the minority groups, particularly the blacks and Hispanics, and the majority groups, the remaining members of the City. Those are not necessarily all white members of the citizens. They include many other minority groups, Chinese, certain ethnic groups, Jewish minority groups and so forth.

It is very evident throughout the hearings that, at least, in my opinion, what is being attempted in these lawsuits is to get more political power for the minority groups, which are plaintiffs but, on the other hand, the sociological, ethnic and racial issues are very real. They are ones which the Court is empowered to deal with and is required to deal with. The only reason I mention the point that I have in passing is that it is almost impossible to separate out the two criteria or the two substantive issues that we have been confronted with. It will take someone with perhaps a great deal more insight or perhaps understanding of the issues than I have to be able to say that this is one kind of case or the other, that is, a political struggle or a case of preserving and enforcing the rights of minorities.

[4089] In any event, that gets us to the question which I think is the key issue in this case and that is the application of Section 2 of the Voting Rights Act. I know Mr. Harte argued most of his time on the question of the Fourteenth and the Fifteenth Amendment. On the other hand, the briefs, at least, of the plaintiffs spent most of their attention on Section 2 of the Voting Rights Act. That to me is the crucial issue in the case. If it were not for the Voting Rights Act I think the case would have been finished a long time ago in favor of the defendants. As I told Mr. Harte in his closing argument, I probably would have found in favor of the defendants on those issues had he made a motion, as I did on the issues regarding Alderman Keane and Mayor Byrne and Comissioner Murphy. Be that as it may, the case went ahead, properly so, because the Voting Rights Act was still in the case.

As, I think, everyone is aware, that statute, when it was amended in 1982, I guess it was—was it 1980 or 1982, the last amendment—put the question of intent and purpose specifically into Section 2 and, in effect, read out of the law the *City of Mobile* decision and put back into the law the *White vs. Regester* decision.

The amendment to the Voting Rights Act, Section 2 is probably a very prime example of the involvement of Con-

gress in attempting to circumvent or overrule decisions [4090] of the United States Supreme Court. I have no doubt that their effort was successful as far as Section 2 was concerned. They might have a little more difficulty in some of the school busing situations or other constitutional issues that Congress is interested in changing the Constitution as interpreted by the Supreme Court but in this case I find that the Act is constitutional.

[4091] One thing that results from that, however, is I think the Act must be construed to not violate the Equal Protection Rights Clause of the Fourteenth Amendment. As I pointed out at one time or another during trial, if Section 2 is interpreted to guarantee minority representation, or proportional representation, or any other outcome of an election, even on a ward level, in my opinion it would violate the Equal Protection Clause of the Fourteenth Amendment. I do not believe Congress intended that. Certainly, when a law can be construed in order not to be unconstitutional, that is the preferred construction. That is the construction the Court should adopt.

It is not an easy statute to deal with, frankly. I was a little disappointed that the parties did not do a little more work in attempting to rationalize their particular positions under the statute but they have more or less assumed that the statute applied in a certain way and went on from there.

I do not fully agree with the position that the parties have taken with respect to Section 2. I will try to explain that. First of all, Section 2, as amended in 1982, is still the same basic voting rights statute that it started out to be. Subparagraph (a) makes that quite clear to me. It merely talks about voting qualification or prerequisite to voting or standard practice or procedure [4092] applied by any state or subdivision which results in a denial or abridgement of the right of a citizen of the United States to vote on account of race or color is precluded, is preempted by Subsection (a).

The amendments to that subsection were simply to put the words "results in" into the language of the statute.

So that *White vs. Regester* has become the law of Congress. The legislative history of that section, as evidenced in the Senate report, which the parties have quoted from at great length and relied upon, says nothing about redistricting or diluting the vote of minorities and neither does *White vs. Regester*, in effect. What that case and what this statute is really talking about, in my opinion, is precluding a minority group, including a language minority group, from any effective participation in the elective process.

In *White vs. Regester*, for example, the court was really looking at a situation where the Mexican-Americans had never elected anybody from certain districts because they were at-large districts. In view of that history it came to the conclusion that there was a purposeful abridgement of the powers of that particular minority, which really was a strong minority, to elect anyone. It had gone on for years. In addition to that there were other abridgements to the right to vote such as a poll tax, I believe. The [4093] real effect that Congress and the United States Supreme Court was looking at in that case was the inability of that very large minority to ever have any effective participation in the elective process.

Then you get to Subsection (b), which was added in 1982, and it merely says that a violation of Subsection (a) is established if based on the totality of the circumstances it is shown that the political processes leading to nomination or election in a state or political subdivision are not equally opened to participation by members of a minority group; again, talking about participation in the political processes, including the nomination or the election of individuals into a legislature or a City Council, as the case might be.

I might say, as I am sure everyone realizes, the words "totality of circumstances" come out of two or three of the Supreme Court cases. Not only *White vs. Regester* but *City of Mobile* uses that language and, I am sure, one or two others do, although, I have not tried to annotate that particular language anyplace. I think that is

important. I think "totality of circumstances" is a very important concept in this particular case because we are not talking about individual wards or legislative districts or Congressional districts. We are talking about a city with 50 different wards in it. I think that is the entity that must be examined.

[4094] As Mr. Miner said in his memorandum, the map is the real key to the whole case. By the "map" that means all 50 wards. It does not mean one ward or one community or even one minority. It means the "totality of circumstances".

Then the statute goes on to say, as an illustration of what can show a violation of Subsection (a): (Reading:)

> ". . . in that its members—" that is the members of a minority group or a class of citizens. (Reading:)
>
> "—has less opportunity than other members to participate—" the word "participate" is in there again, you see. (Reading:)
>
> "—and to elect representatives of their own choice."

Now, that phrase, "to elect representatives of their own choice" is the one I was talking about when I expressed the opinion that a statute should be construed in a constitutional way rather than an unconstitutional way. To say that this statute guarantees or preempts the right of any group, minority or majority, to a certain result in the election process, in other words, to actually elect a representative of their own choice, in my opinion, would violate the equal protection clause of the Constitution. I think, as we went through the case, the plaintiffs pretty [4095] much agreed with that.

There are some further examples which are not part of the substantive statute or Subsection (b), in my opinion, at all but are examples, such as the extent to which members of a protected class had been elected to office in the state or political subdivision is one circumstance which may be considered. (Reading:)

> ". . . provided that nothing in this section establishes a right to have members of a protected

class elected in numbers equal to their proportion in the population."

Now, that proviso was put in there quite intentionally, as the legislative history shows. It was an amendment and it was done in order to accomplish just exactly what it says, to prevent any court from imposing a certain proportion of elected representatives on a city, county, state or any political subdivision and thereby merely by the numbers decide that a certain number of representatives are going to come from each group. It probably would not have passed without that proviso on there. Although, that is a supposition that I can't back up with any of the legislative history except that, obviously, in my opinion, it was added to the statute in order to give it the necessary strength to pass.

In any event, everyone, I believe, agrees that proportional representation is not permitted or not a [4096] criterion that the Court can use and yet, on the other hand, a good many of the expert witnesses for the plaintiff and I think the plaintiffs' argument itself is very difficult to distinguish between an attempt to get as much proportional representation as possible or to protect the rights of a minority. I will not, of course, violate that particular proviso in the statute.

The point I am making is, as I read Section 2 as amended, it is not directed toward the problem of redistricting except if problems arise in a redistricting process they can then violate Section 2(a) or Section 2(b). In other words, if certain things are done, as the plaintiffs contend they were done in the redistricting such as, let us say, fragmenting or fracturing of minorities or packing of minorities or gerrymandering of a mayor's domicile or other artificial types of redistricting, that can result in dilution or in underrecognition of the rights of a minority group.

[4097] So, it is necessary to turn to the specific examples which the evidence discloses where the rights of the individual members of a minority to participate in the voting process in the nomination and election of candidates to office in some way or other have been violated.

I might say that this is not entirely based upon a reading of the literal word of the statute. I have read the Senate report rather carefully. I believe that it is supported by the report itself, which goes almost entirely into the issue or whether or not purposeful violation of voting rights should be eliminated in favor of the result or the effect of various things which happened. Then, of course, if the results or effects are a violation, then the way in which redistricting is accomplished can violate Section 2(a).

Another place where I think the parties somewhat misread the legislative history is in taking the various tests which were set forth in the Senate report and which came in good part out of Zimmer vs. McKeithen, which is a Fifth Circuit case decided en banc after the first panel had decided it the other way, as evidence that a redistricting plan somehow or other violates Section 2. But actually what those examples were talking about, in my opinion, were, first of all, instances where the rights to vote have been either abrogated or, in substance, negated by various types of [4098] unfair procedures or where certain things have happened. And I will grant you it can happen in redistricting as well as in other places, not as well as, but at least it can happen in redistricting matters. So that the instances that were being talked about in the Senate report and Zimmer vs. McKeithen became examples of the way in which Section 2 could be violated, not examples of the way in which redistricting plans could be declared to be invalid and thereby taken over for a redistricting by the court.

Although I may not have made that distinction as clearly as I should, I think it is important. I think the reading of not only the Supreme Court cases but of the statute and the Senate report itself makes that quite clear and that merely by taking those examples and offering proof on them on behalf of the plaintiff groups does not necessarily show a violation of Section 2. I think the violations have to be shown to exist because of the defects, if any, in the redistricting plan when it is looked at as a whole, over the city's 50 wards in a totality.

Now, therefore, it seems to me, and I will construe Section 2 the way that most of the experts who testified and, really, most of the questions posed by both sides inferred or implied, and that is as a test of overall fairness not only to the minorities and the plaintiffs but also to the population as a whole. This is really a case [4099] of equitable rights and equitable considerations, although it is phrased in the language of Section 2 and it is brought under Section 2 and any violations have to fit within Section 2. I am not exercising general equitable jurisdiction here. I am exercising jurisdiction under Section 2. But I think the way Section 2, in the context of the case that we have here involving the entire city and the 50 wards, has to be applied in the context of fairness and equitable treatment of the various voting groups, and particularly minorities that brought the lawsuit, and that means do they have a reasonably fair opportunity to participate in the voting and elective processes in the City of Chicago. By "they" I mean in this instance the black minority plaintiffs and Hispanic plaintiffs.

Well, that is a reduction in the scope of the case and the language of the statute. It, perhaps, doesn't really help us solve this problem entirely but I believe it gives me enough guidance to come up with what I believe is a proper disposition of the case. By "proper" I mean based upon not only the interpretation and application of Section 2 but also based upon the weight of the evidence.

[4100] Now, first of all, I think that as far as the vote in the City Council is concerned, taking that simply on its face value, one would say that it was fair to everyone living in the City of Chicago. By that I mean that each alderman was voting for his constituency and had in mind the rights of his constituents, be they black, Lithuanian, Chinese or whites, and voted accordingly. So, on its face what the result was was a reflection of the City Council as it existed at that time under the 1970 districts but with the 1980 population being represented and only one or two black aldermen voted against the redistricting plan as a whole, the 1980 redistricting plan. So, by definition it seems to me that those aldermen were being fair to

their constituents because they represented their constituents and voted the way they thought their constituents' rights were best served.

So that there really isn't any very strong inference that the vote of the City Council was unfair, and I think the inference is overcome by what I have already said. However, that does not mean that the plan itself, as it turns out, was unfair—I mean was fair or unfair, either way.

I think that the evidence of the plaintiffs, therefore, must be looked at in the light of overall fairness to the persons in the minority communities and also the persons in the City as a whole and that most of the evidence really [4101] did not bear very heavily on those issues.

Now, for example, a lot of testimony was taken particularly from Professor Hauser on the question of fragmenting. Fragmenting, of course, will occur in a city where population has been moving and particularly where minority population has been moving and where it has been increasing but primarily when it is moving from the center of the city to the west and to the north, those so-called "fingers" are going to be in somebody else's ward. As long as the person in whose ward is voting on the plan you are going to find minority groups in a ward. There are probably more minority—I should say, I can find that there are more minority groups who are black in white majority wards than there are white minorities in black majority wards. That is primarily for two reasons, one, that the blacks were moving in a direction that caused them to be somewhat dispersed along the borders of their communities and, secondly, because of the aldermen who represented those wards into which the blacks were moving, and to some extent the Hispanics were moving, wanted to preserve the majority, whatever it might have been, which elected them to office.

So, I do not consider that fragmenting of the black or the Hispanic minority is a violation or even very great evidence of a violation of the equitable principles of Section 2. Pretty much the same thing is true with [4102]

respect to packing on which a certain amount of emphasis was laid.

As Professor Hauser testified, the City of Chicago is, probably, as much or more segregated than any major city in the United States. As a result of that you find and it is inevitable that you will find that certain wards are heavily populated by blacks.

Whenever there is a serious problem of segregation in a community such as Chicago—and the testimony is quite clear that there is segregation in Chicago—redistricting is going to result in a certain amount of packing of those minorities into certain wards. Some wards are going to have 95 or 98 percent of a minority, and there is no way to avoid that in a segregated community. I have already found, however, that there isn't any intentional packing and that the packing is a result of those incumbents who wish to protect their incumbency, protect their turf. If they came from a ward which was predominantly black and they were elected in a ward which was predominantly black, they are going to want to retain that complexion or that nature among the voting population.

[4103] I might add that it is somewhat inconsistent with the policy which the federal government has adopted and, I believe, the City of Chicago has adopted of integration of minorities to ask a court to find that a ward which has a fragment of a white, black or Hispanic group and it is for some reason or other a violation of the federal statute. It seems to me an inconsistent position to ask the court to adopt when all of the cases under Section 1983 or Title VII and many other cases emphasize the desire and the policy of the Federal government and the local governments to promote integration rather than segregation. Fragmenting, as shown on some of the plaintiffs maps, is really a step toward integration and packing is a step toward segregation. But, in any event, I do not believe that the evidence on either of those two subjects does show a violation of Section 2.

The third principal contention that plaintiffs made was that the 1980 configuration is regressive. There are other

Now, in 1979 there were not 19 aldermen who were from black majority wards. There were 17 aldermen from black majority wards. One of them was not black but he came from the 5th Ward. That was a heavily black majority ward. So that in Mr. Harte's opinion and the way he handled his case there was no actual regression because under the present City map there still are 17 majority black wards. But since, in my opinion, the black minority by happenstance, if you will, or by the way in which they migrated had become the majority in 19 wards, even though the wards were on the old line were not constitutionally viable, as a matter of fairness that is [4107] the way the map should have been drawn. I do not criticize the City Council because of the reasons I have already given. They could not be expected to vote any other way than the way they did.

Now, the question is how to remedy the situation. I would adopt the recommendation of the Federal Government—and I think it was also a recommendation or one of the points made by the plaintiffs—and that is to restore a black majority to the 37th and the 15th Wards.

As everyone knows, the 37th Ward was changed from a heavily black ward to a rather heavily white majority ward, 51.96 percent of the voting age population by the 1981 map. The 15th Ward was changed to 56.92 percent voting age population by the 1981 map. I would ask the City defendants, through Mr. Harte, to produce a result which would restore a black majority to the 15th and the 37th Ward. I would also order that that be done without changing the basic population mix of the adjacent wards. I am not going to try to draw a map of my own but I think that it can be done without changing the basic population mix or controlling interests of the adjacent wards. It certainly can be done with respect to the 37th and, I think, with perhaps a little more difficulty but not great difficulty can be done with the 15th.

The more difficult problem is presented by the [4108] Hispanic minorities, the Velasco plaintiffs. Part of that difficulty arises by virtue of the fact that they have no

representation on the City Council and no ward to be maintained in its majority position by any vote of an alderman and therefore did not fare as well, in my opinion, as did the black minorities in the overall result. Not even the Government has made a proposal as to how the situation with respect to the Hispanic[s] can be alleviated.

Ms. Martinez told us in the closing argument that she thought three majority Hispanic wards and one plurality ward—or possible Hispanic ward—I guess it wasn't "plurality"—would be fair but more fair would be four Hispanic wards, and I agree.

[4109] I want to get back to one point, though, with respect to both the Hispanic and the black wards and that is that there is no statistical or objective evidence in the record that a minority is entitled to or should have more than a majority of the voting age population in order to have a reasonably fair opportunity to vote for candidates of their choice or even to elect candidates of their choice.

First of all, there is no contention in this case that any individual was deprived of the right to vote as such. There isn't any evidence to show that a group or minority group, however small it might be, is deprived from the right to nominate a candidate so that those that support that particular group can vote for that candidate.

The evidence about the necessity of having a 65 percent majority in order to control a ward and guarantee or practically guarantee the election of an alderman is not supported by any statistical evidence that I can recall in the record. Also, by use of the voting age statistics, five percent of the 65 percent is immediately eliminated.

The figures which—I think it was Mr. Peterson—anyway one of the defendants' expert witnesses put into the record were quite revealing and satisfies me that when the opportunity arises or when the incentive is presented, it is not necessary for a minority to have more than 50 percent to control a ward. 51 percent or 52 percent, [4110] of course, is better.

The turnout in the 1982 election and various other turnout figures and registration figures indicate it is a ques-

tion of political education and incentives and organization to permit or facilitate the control of a ward by any particular minority. The second five percent, of course, comes from turnout. It has been suggested that minorities need a five percent incentive or a five percent advantage in order to overcome the turnout record of other groups and yet there is no evidence to support that five percent. The evidence that the defendants presented satisfies me it is not a universally accurate or reliable figure; that blacks and Hispanics will turn out in sufficiently large numbers to control an election if they have the candidate and if they have the incentive to vote and if they have the organization. Intelligence or economic standings in the community is a factor which is thought to be of significance but those are all variables. They vary within the elections. They vary between wards. They vary between years. They are not statistically supportable by any of the evidence in the record. So that I would disregard and discard the rule of thumb that has been talked by various witnesses that 65 percent of a minority is necessary in order to control a ward or, to put it another way, to give the voters in that ward a fair opportunity to vote for a candidate of their [4111] choice.

Now, to get back to the Hispanic minority. The superimposing of 1980 population figures on 1970 ward lines results in four Hispanic wards and one ward with a Hispanic plurality. Getting back to the exhibits, I think that is shown by Exhibit 142.

Just taking gross population figures without any alteration or explanation, the Hispanics had a majority in the 22nd, the 25th, the 26th and the 31st wards. They have a plurality in the 32nd ward. As I said with respect to the black minority, I think that even though it is somewhat, perhaps, dependent upon haphazard migrations and influx of population into the city, nevertheless with that number of Hispanics having come into the city it seems to me only fair that they be accorded the opportunity to have an elected representative in four wards where they have a majority and that the plurality ward be preserved.

[4112] Now, if you go to the voting age population, which is a fairer test but also one in which the Hispanics have a considerable disadvantage, apparently, there is not a plurality but an almost even split among the blacks, Hispanics and whites in the 1st Ward. In the 22nd Ward, which is primarily inhabited by persons who come from Mexico and therefore are not in many instances or large proportions citizens, the Hispanics have a voting age majority of 59 or almost 60 percent, which seems to me is a fair figure since we have no figures of any reliability as to citizenship. The best we have is voting age.

In the 25th Ward they have a voting age plurality of 46.19 percent. The black population is 27 percent in the 25th Ward and the white population is 24 percent. So, it seems to me that that is a fair disposition of the 25th Ward configuration as far as the Hispanics are concerned.

The 26th Ward, when you look at the voting age population, is reduced down to a minority ward of 43.68 percent. The white voting age majority is slightly larger, 44.34 percent. In my opinion the 26th Ward should become a majority Hispanic ward by redistricting in order to give the Hispanics a fair opportunity, when you consider the fact that the majority of the Hispanics in the 26th Ward are Mexican, they should have something in the vicinity of a 55 percent majority in that ward to accommodate the fact [4113] that many of them are not citizens and haven't had a chance to become citizens.

The 31st Ward on voting age population is a 52 percent majority Hispanic ward. As I understand it, that is primarily occupied by Puerto Ricans and they, of course, are citizens. I find no reason to order any change in the complexion of the 31st Ward.

However, the 32nd Ward is now, on voting age statistics, reduced to a 40 percent minority compared to a 54 percent white majority. I think that percentage should be reversed. I would so order a change in the demographic complexion of the 32nd Ward.

With those changes the Hispanics would then have four majority Hispanic wards based on voting age, one plural-

ity ward where they would have a clear plurality and a much greater opportunity to vote for and select a candidate of their choice than either of the other two minorities and the first ward where they are about evenly divided between the other two minorities. They are a minority in the 1st Ward but so were they a minority in all but five wards when the population was superimposed upon the 1970 boundaries.

So that the result I am indicating would be fairer to the Hispanics who, I think, are entitled to a better opportunity to representation in the City Council under the Voting Rights Act and have been deprived of that by virtue [4114] of the fact that they are basically in wards where they have no opportunity to elect a candidate of their particular ethnic and language background.

Now, there was another problem among the Hispanic population. One was fragmentation on the North Side of Chicago. In my opinion that was not an intentional deprivation of rights by the City Council. It was a matter of fragmentation by a voluntary act of the minority itself. It is very difficult to do anything more than what I have already suggested with respect to the North Side because of the dispersal of the Hispanics in those areas. There are five wards up there that the Government and the other parties have pointed out and are evident from Plaintiffs' Exhibit 9 but with this reconstitution that I have suggested there will be two Hispanic wards on the North or Northwest Side of the City of Chicago.

I realize that this does not necessarily accommodate their desire to be in single communities, that is, a community within a single ward. That is not a controlling consideration in redistricting. I think more important are the various factors I have mentioned. However, if the City can find a way to accommodate the comm[u]nities and put them in a ward by themselves like, for example, a change in the boundary of the 1st and the 25th Ward from perpendicular to horizontal as Ms. Martinez suggested, I think it would [4115] be more equitable than the way it is now. But I do not believe that community integrity or

the fact that minorities live in certain communities should control the other factors that I have mentioned, the one vote/one person and the opportunity to participate meaningfully in the elective process.

[4116] I might say just one other thing, and that is when the voting age population is considered with respect to Hispanics, their representation or their opportunity to elect a candidate of their choice was reduced to one ward on Exhibit—I do not have the exhibit number here but that is one of the plaintiffs' exhibits—and two and a half plurality wards—or two plurality wards and one that was close, the 1st Ward. I do not criticize, as I said, the City Council for that result. They did not consider and did not have available to Messrs. Keane and Murphy the voting age population figures and did not make their 1980 ward map based on voting age population. They did it on gross population figures. When one considers the question of equity, then it becomes inequitable, in my opinion, as far as the Hispanics are concerned when the voting age is factored into it.

I might say, Mr. Harte, that I do not believe the one man/one vote principle needs to be applied quite as strictly as it was by former Alderman Keane. It was so close that there was no variation to speak of anyplace in the City, whereas the Supreme Court is not that rigid. As a matter of fact, I think it was in *White vs. Regester* in which they said that principle does not apply with strictness to a local district such as wards whereas it does to congressional districts.

[4117] In any event, I do not overlook the one man/one vote. I am simply saying that if it is necessary to depart from it more than a half a percent, which is about what it was at the maximum in the city map, it certainly would not violate the constitution in my opinion.

Those findings and conclusions which I have attempted to state will stand as my findings and conclusions in this case under Rule 52. I am doing that because what I have really done here, I think, is dictate a decision that would stand under Rule 52 for findings and conclusions. I know

description so our Board can go on to work and prepare for the election, if it is to go on February 22nd.

MR. HARTE: I will do that also, Judge.

MR. COLMAN: We will help him as much as we can, your Honor.

THE COURT: Yes. Let's not argue about the substance of what you are doing. There are other times and other places where that can be thrashed out legally. There are various steps that can be taken.

[4121] I think, if the parties understand what I am trying to do, they should be able to come to an agreement as to what the lines are without prejudice to their substantive rights, either side. I know both sides have different views on what the merits of this case should be.

So, with that admonition, I think the only thing that probably will have to be moved would be census blocks but maybe I am mistaken about that. Certainly I would agree that there should not be a split of precincts because that just causes problems with the voting less and registration and everything else that can be avoided.

MR. LEVINSON: Yes, your Honor.

THE COURT: The other things I hope could be put in place in time so that the election would be able to go ahead on the new lines as scheduled.

MR. COLMAN: Your Honor, obviously, we would like an opportunity to review the findings that you have dictated this afternoon.

One thing that you certainly implied that I think should be made explicit now is that you have found, as I understand it, that the City Council's map violated Section 2 of the Voting Rights Act in that it had the effect of discriminating against blacks and Hispanics in the particular areas that you so identified.

THE COURT: Well, I think everything you said was correct [4122] up until you get to the particular areas that I have identified.

The reason I have identified the 15th and the 37th Ward was not because of an intentional discrimination but because of the fact that those are the places where the change is most obvious and where it can be remedied most easily, I think.

MR. COLMAN: I am not talking about intentional discrimination now. I am talking about the results test under Section 2.

THE COURT: I realize you are not.

What I want to get away from is any implication that specific areas violated or specific wards violate Section 2 as distinguished from the plan as a whole.

MR. COLMAN: I see.

THE COURT: I really am taking Mr. Miner's argument from the brief, and that is you have to look at the entire map. But the place where it can be corrected and where I think it should be corrected are in those particular wards. I picked those wards out partly because they had been changed, their complexion had been changed, but also partly because it looked to me as though that would be the least disruptive place for the changes to be made and that will restore the balance that existed before the City Council map was adopted.

[4123] MR. COLMAN: So, I am correct in that your finding is that the map taken as a whole under the totality of the circumstances violates Section 2?

THE COURT: Yes, I think that certainly is correct because otherwise I would not have ordered any relief.

MR. COLMAN: Okay. Thank you, your Honor.

THE COURT: We will recess until 10:00 o'clock Thursday morning, then, gentlemen, and ladies.

(Whereupon an adjournment was taken until 10:00 o'clock a.m. on Thursday, December 23, 1982.)

the parties are anxious to get along with this matter in one way or another. So, I am not going to ask for findings or conclusions to be submitted by either party for formal entry by the court. I will, however, not resist additional findings and conclusions if they are felt to be necessary by a party. I simply do not want them to be repeated in a formal finding and conclusion judgment for matters of expediency.

If either party feels I have overlooked a finding or a conclusion that is essential to their case within the framework of the decision that I have made, I will be glad to amplify upon what I have said.

I want to ask Mr. Harte to carry the burden of complying with the two problems that I have mentioned with respect to the blacks and Hispanics redistricting.

[4118] MR. HARTE: Yes, your Honor, we are prepared to move in that direction immediately.

THE COURT: I will give you a date to come in with it or, if you wish, I will wait until you serve notice on it.

I would like to ask that the parties be consulted and see if we can't get an agreement within the framework of the decision that I have made even though, I suppose, both parties wil disagree with certain aspects of it.

MR. HARTE: Yes, your Honor.

I am prepared to comply with the Court's order Thursday, your Honor.

THE COURT: All right. Do you wish to bring it in Thursday morning at 10:00 o'clock?

MR. HARTE: Yes, sir.

THE COURT: Will that give you time to confer with the parties, the plaintiffs?

MR. COLMAN: We are ready to begin conferring with him immediately, your Honor.

We think if this cannot be in place by Thursday with the filing deadline starting next week, the period starting next week, that it would pose lots of problems for everyone.

We think it is of paramount importance right now to know by the end of this week what lines are where.

[4119] THE COURT: I will be here Thursday at 10:00 o'clock and I would be happy to take it up with the parties.

Would you like to do this in chambers first and then come out to court if we reach a—

MR. COLMAN: I would prefer to do it in open court, your Honor.

THE COURT: I do not have the expertise or sophistication to make pinpoint changes in the proposals that have been outlined here. I do not propose to draw a map myself.

MR. HARTE: I think we are all capable of doing that for your Honor and presenting your Honor with what we believe would comport four-square with your direction and order. To the extent we can, we may attempt to come to some agreement, at least as to form, as to what would comport with your order. I would be prepared, in any event, to present a response to your direction by 10:00 o'clock on Thursday.

[4120] MR. LEVINSON: Your Honor, Michael Levinson on behalf of the Chicago Board of Election Commissioners.

THE COURT: Yes.

MR. LEVINSON: Were the legal descriptions of the redistricted wards presented to the Board tomorrow we would have a very close time frame within which to prepare for precinct registration and the election. We are putting the Court on notice that hopefully Thursday we would have a legal description and hopefully there would not be split precincts. That would pose a severe administrative burden whereby an existing precinct has to be split up and added onto another precinct.

Rather than belabor the Court with all the details, which I have in my hand, suffice it to say that we are running very close. Hence Thursday should be the date we receive the final map and the legal metes and bounds

[4124]* IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	)	
vs.	)	No. 82 C 4085
CITY COUNCIL OF THE CITY OF CHICAGO, et al., *Defendants.*	)	

Before the HONORABLE THOMAS R. MCMILLEN, on Thursday, December 23, 1982, at the hour of 10:00 o'clock a.m.

The trial was resumed pursuant to adjournment.

APPEARANCES:

MR. JEFFREY D. COLMAN
MS. JULIE C. REYNOLDS
MR. RICHARD H. NEWHOUSE, JR.

MS. VIRGINIA MARTINEZ
MR. ROBERT J. ZAIDEMAN

MR. JUDSON H. MINER
MS. BRIDGET ARIMOND

MS. SHERIBEL ROTHENBERG

MS. MARGARET C. GORDON
MR. ROBERT S. BERMAN

* Numbers in brackets refer to the pagination of the Official Court Reporter's transcript of proceedings.

MR. WILLIAM J. HARTE
MR. JEFFREY B. WHITT

MR. MICHAEL LEVINSON

MR. SAM RUFFOLO

[4125] THE CLERK: 82 C 4085, Ketchum vs. City Council.

MR. COLMAN: Good morning, your Honor.

MS. ROTHENBERG: Good morning, your Honor.

THE COURT: Good morning.

MS. ROTHENBERG: I would like to hand up to the Court, your Honor, the consent judgment which has been signed by both Mr. Harte on behalf of the City Council and we on behalf of the Pillman intervenors. This accepts the offer of settlement made by the City Council to change the configurations of the 42nd and 43rd wards in conformity with our exhibits.

MR. COLMAN: Your Honor, we think your decision on that should await review of the alternative maps that will be presented to you this morning.

To the extent that any consent agreement is reached between the Pillman people and the City Council, it certainly cannot take precedence over the Voting Rights Act allegations that are still present before you. Hopefully in the next several minutes the question of relief on those issues will be resolved.

So, we would ask that you defer entering any judgment in the Pillman intervention matter until we have resolved our issues.

THE COURT: Does this settlement impinge upon any of the areas that the City is going to redistrict?

[4126] MR. COLMAN: Frankly, your Honor, we haven't been served with a copy of the consent judgment. So, I don't know what it is specifically that is provided for in there.

THE COURT: I will ask Mr. Harte if it does or can it?

MR. HARTE: I don't perceive, your Honor, that this Pillman intervenor settlement can impact on anything done by your Honor either by the plaintiffs' proposal, as I understand it, and ours.

MR. MINER: Your Honor, or an adjustment to try to conform the North Side Hispanic community our proposed alternative causes a deviation of a block. We don't think that it is in violation of the principle that has been worked out. There is an adjustment of one street that permits us to make a proposal that satisfies the portion of the order dealing with the Hispanic communities, but it is a very minor—I showed it to Ms. Rothenberg. It may well in no way interfere with their settlement.

MS. ROTHENBERG: Your Honor, I just looked at their map this morning in court. The proposed consent judgment adopts the City Council's offer and our Exhibit 38, which has been in evidence here.

I really think that the proposed adjustment is quite unnecessary and could be made in a manner which would not interfere with the configurations of the 42nd and 43rd wards.

[4127] THE COURT: Well, really, all Mr. Colman is suggesting is that we wait until we resolve the other matters. I think, certainly, the other matters should take some priority.

MS. ROTHENBERG: I understand, your Honor.

THE COURT: So, I will just pass it. I have looked at the order, the consent judgment. It seems to be in proper form. It also contains a map which is self-explanatory. I see no reason why it should not be entered but if it might impinge upon the other matters, then we will reconsider that.

MS. ROTHENBERG: That would be fine, your Honor. Thank you.

THE COURT: Now, gentlemen, let's proceed with the business of the day as far as the rest of the city is concerned.

MR. HARTE: Yes, your Honor.

THE COURT: Ladies and gentlemen I should say.

MS. MARTINEZ: Thank you, your Honor.

THE COURT: I am sure that you have been able to reach an agreement with the City, haven't you?

MS. MARTINEZ: No.

MR. HARTE: Your Honor, following the proceedings on Tuesday, your Honor, we undertook to comply with your directions. The changes that you indicated should be made in the plan.

I met with counsel for the plaintiffs, the [4128] Ketchum plaintiffs, the PACI plaintiffs, the Velasco plaintiffs, the Justice Department in an attempt to come to some agreement as to what those changes would be. Unfortunately that was unavailing and I don't think through anybody's fault but a different perception as to what would be appropriate within your directions.

I have undertaken to comply with your directions. Believe me, I have done so with the exception of one area which, upon analysis of the census data and the voting age population data, was impossible to accommodate. That was in the Puerto Rican area in the Northwest side. I can explain that to you further, your Honor.

I am just wondering what procedure you would want me to undertake at this time to explain what I have done. They have their approach, also.

THE COURT: Since I asked the defendants to draw the new outline, I think you should present it and then we will see what objections there are to it.

I am not going to try to decide between two maps or three maps like were presented at the time of the trial. I am just going to see if the defendants can comply with my ruling.

MS. MARTINEZ: We will have a response at the termination of Mr. Harte's presentation. We also have a motion, your Honor.

[4129] THE COURT: I also am not going to retry the merits or reconsider the substance of the decision that I made the other day at this time.

MR. HARTE: Your Honor, I have two copies of a printout that I have denominated Defendants' Exhibit 258-B, which is a printout of the changes and that can be related to a copy of the printout of the Council map itself. That would be Defendants' Exhibit 7-B.

As has been pointed out to me, there may be some error in the exhibits. May I take a look at them?

THE COURT: 258-B?

MR. HARTE: Yes.

(Exhibit tendered to counsel.)

MR. HARTE: Your exhibits are appropriate.

I show you also Defendants' Exhibit 7-B, which is the council printout which may be helpful, your Honor.

(Exhibit tendered to the Court.)

MR. HARTE: If your Honor will recall—if I can go from the bottom up—your Honor spoke to Ward 15, if you will recall. Keeping in mind the admonition with respect to population mix, changes and the like Ward 15, your Honor, was raised in total population, black population, from 41.7 to 60.1. It was raised in voting age population to 52.6. So that 15 as presently configured would be a 52.6 percent voting age population ward. This was done, your Honor by—

[4130] THE COURT: Excuse me. Let me interrupt just a second.

I do not follow this on Exhibit 258. I see the map all right. But is it some place in Exhibit 258?

MR. HARTE: Yes, your Honor. If you go to 258-I and Defendants' Exhibit 7-I, if the Court please, and go down to the 15th Ward you can compare them both.

THE COURT: I am on 258-I.

MR. HARTE: Yes, your Honor. If you go to the 15th Ward and then the ninth column over you see the percentage of total population of black within 15 under the compromised proposal would be 60.01. Then if you go over

two more you would find the figure 52.6 percent of voting age population, the total voting age population.

So, the present figures under this configuration would be that it would be a 60 percent black ward with a percentage of voting age population of 52.6. The Hispanic then would be 6.4 with voting age population of 5.6. So, essentially there would be about a 35 percent white population in that ward.

Now, your Honor, for verification of the increase you go to Defendants' Exhibit 7-I and you see the same area, Ward 15 and you go over to the eighth column and you find the figure of 41.7. So, it has been increased approximately 20 percentage points with black population, which would be about 12,000 people.

[4131] Now, your Honor, if I can now go to 37—

THE COURT: Before you leave 15, do the changes you are proposing have any collateral effect or ripple effect that would change the composition of the adjoining wards?

MR. HARTE: Yes, your Honor. It would involve three wards, the 14th, the 15th and 16th. Essentially what would happen would be the 15th ward would come further east and take these three census tracts here, which are predominantly black, your Honor (indicating). If you see the orange, that is what it will be and the black line is what it was (indicating). So you see the 15th ward being shifted east.

There is one more census block up here which is black, and it takes that too (indicating). So, there would be an exchange with 14 and 16.

16, in return for the three census blocks here that are now in orange, would take the brown census tracts up here which would not interfere with the black total population of 16.

Ward 14 would take the white population in this area in blue in order to comply with what Ward 14 was releasing with respect to these four census tracts, the 15th and 16th. That would make 14 a lesser black ward. It was a majority white ward to begin with.

THE COURT: White?

[4132] MR. HARTE: 14 was a majority white ward to begin with. It would make it more white.

16 would not suffer from the release of the census tracts to 15 to make 15 more black. In that way you have created a 60 percent black ward, a 52.6 percent voting age population black ward in 15.

Now, your Honor, specifically with respect to 37, your Honor, 37 would be brought down south or below Chicago Avenue in order to reach the black population in that area. Having brought it down—it is now in the orange—it impacts on 29. 37 would release white population to 30. So, when you make this dramatic change in 37 you would necessarily impact upon these wards within the black area here (indicating).

The problem that arises is that when you make this change you must be careful to protect and not impact upon the Puerto Rican area here (indicating) and impact negatively there (indicating).

So, what was done here with respect to 37 is that there was created—where there was under the Council plan a 36.8 percent black population, total black population, that was increased to 61.7 black population. Voting age population was increased from 31.2 to 56.2 percent voting age population in this area (indicating).

Now, the changes that that brought in 29 [4133] and 28 and 27 and 24 did not impact negatively on the black population within those wards, the trades that had to be done to accomplish this result.

Those changes within those wards are identified in the Exhibit 258-I can be analyzed. But to the extent that any of these wards, 29, 28, 24 and 27, are affected, they are not affected negatively with respect to the black population or diluted.

I would like now to address Wards 22, 25 and 21. Your Honor, you indicated a concern about reducing wards with respect to the Hispanic population. It became apparent

to me that what you desired and directed to be done with respect to the Puerto Rican area could not be accomplished with respect to the creation of three voting age population majority wards in the Northwest side.

In conference with the government and the Velasco plaintiffs—although they are not wildly enthusiastic with what I am doing here, I assure you—it was my thought that Ward 22, which was 64.9 total Hispanic population and 59.9 voting age population be increased to join and alleviate their concerns with respect to the Little Village area, it then would create in 22 a 75.6 Hispanic or predominantly Mexican population, total population, with a voting age population of 69.0.

Now, this was accomplished, your Honor, in [4134] this manner: The pink, as you see it on the map, would be the 22nd Ward. The exchanges that occurred were that 12, which had formerly taken the Hispanic community to the north was returned to essentially the ship canal boundary in the green and took the black population on the extreme eastern end of the ward and it was joined to 12. Originally this area had been within Ward 12 (indicating).

Also, in order to support and increase in Ward 25 with respect to the Hispanics, this area north of the canal was joined to 12. It is essentially the area geographically that encompasses the jail (indicating).

THE COURT: It is, under your proposal, joined to 12, you say?

MR. HARTE: Yes, your Honor. The green here is taken essentially from 25 and it is put into 12 (indicating). It does not create a great deal of difficulty with respect to minority population.

So, you then have a new Ward 22, which is stronger Hispanic than was contemplated in order to alleviate their concerns with respect to Little Village.

Your Honor expressed the concern and the desire to do something in the area of Pilsen and that was accomplished, your Honor, consistent with your direction and

desire in an exchange between the 25th ward and the 1st ward. You see it depicted in the blue area here (indicating).

[4135] The 25th ward had a total population of 52.6 percent under the Council plan with 46.2 voting age population. With the introduction of Hispanic population, your Honor, to the east of Ashland Avenue, which was formerly in the 1st ward, it increases Ward 25 to a 65.4 percent total Hispanic population for that ward and a 59.5 voting age population.

I would add that within Ward 25 would be a 15.7 total black population and an 18.1 total white population. So that clearly the majority and voting age population in Ward 25 would be Hispanic.

Now, in order to accommodate this blue area Ward 1 would come east, almost to Oakley, as depicted in the brown (indicating). If you go this way, in order to make the exchange between the two wards on the bottom, if you go east and you come west with respect to the 1st ward (indicating).

In order to accommodate the population, also, a small portion of the 27th Ward was placed within the 1st Ward. You see, also, a small portion of the former 22nd Ward was placed within the 25th Ward and a small portion of the 27th Ward was put into the 24th Ward and a small portion of the 24th Ward was taken from the 22nd Ward. All of this was to accommodate numerical equality, your Honor. But the principal change would be an enrichment of the 25th [4136] Ward with Hispanic population in the southwest border of the 1st Ward.

Now, let me go to the 42nd and 43rd Ward. You see that depicted on this compromised proposal or what have you, the Exhibit 258, as effecting the Pillman settlement (indicating). So, that takes care of that.

Now, specifically with respect to the Puerto Rican area of the City on the Northwest side, your Honor, the direction of the Court was to permit 31 to remain as it was, which would be essentially 52.4 percent Hispanic and to

raise 26 and 32. It became apparent, your Honor, that there simply is no way under the census returns that a voting age population under the 1980 census data that that can be accomplished because of the dispersal of Puerto Ricans in the area and the integration with whites.

Also, there was a concern to contain, to the extent possible, the voting age population majority within 31. As the Court is aware from the evidence, within Ward 31 there had been appointed a Hispanic alderman, Joseph Martinez. It is my understanding he is not going to run but the Democratic Ward Organization has announced the support of another Hispanic candidate in the area.

In any event, with respect to the changes with respect to 37, your Honor, 31 came farther west, to Cicero Avenue. You see it now in the orange (indicating). [4137] The black lines are what formerly were the Wards 37, 30, 21, 28 and 27.

The bottom portion of 31, which now is exchanged to suggest a change to 28 is essentially a black population area.

The white area depicted in the southern part of 31 is also black population. That was exchanged with 27 in order to enrich 31 with the Puerto Rican voting age population, which was essentially virtually the same as it was before.

So, you see now the configuration with also the exchange of the orange with Ward 37. That is also essentially Puerto Rican and Hispanic. The exchange with the southern part of 30, that also was in order to join this ward together and retain essentially what had been the majority voting age population.

In the November 30 map the total population was 57.3 percent with a voting age population of 52.4. Under this plan Ward 31 would have a 58.1 total population, which would be an increase of almost one percentage point on total population but paradoxically, because of the different geography that it encompassed, it bore a lower voting age population of 51.5 percent.

Essentially what I am saying is that what occurred was an increase in the total Hispanic population [4138] within the Ward and notwithstanding that a lowering of the voting age population by .9 but it is a majority voting age population ward.

With respect to the direction of 26 and 32, your Honor—and it became obvious to me, at least, and to our people that you could not create three voting age population majority wards on the Northwest side consistent with your direction—I selected 33 instead of 32 as the Ward which would be raised in Hispanic population.

Essentially what happened and what is proposed is, if you see in the current northern extreme of what was 33, that is exchanged with 35, right up here, your Honor (indicating). So, 35 becomes much more anglo. And, instead, this yellow down here, the southern portion of 35, is taken into 33 (indicating). 33 then is brought down farther to North Avenue to produce a majority total population Hispanic ward. Formerly 33 was a 35.5 Hispanic ward with a 29.4 voting age population. With these exchanges, your Honor, it becomes a 53.2 majority ward from a total population point of view with a 46.2 Hispanic voting age population.

Now, with respect to 26, your Honor, 26 was changed from a 52.3 percent total population Hispanic ward to a 54.0 total Hispanic population. The voting age population was raised from 43.7 to 45.3. That was done essentially, your Honor, by exchanging this yellow area here, [4139] which is now yellow on the map, with the 27th Ward, which is predominantly black and also a white population, with this area here, which is a densely populated tract, which had formerly been in 31 and which went to 26 when 31 was brought west (indicating).

So, what you have is an increase in 26, 33 having been selected as the most appropriate ward to change with respect to Puerto Rican population by bringing it farther south and west and then to preserve the traditional base in 31.

That essentially is the response with respect to your direction of Tuesday.

In the last analysis you have 19 majority black wards with majority voting age population within them, three Hispanic wards with a majority voting age population in them. The 26th is a Hispanic plurality ward with a 45.3 Hispanic plurality. 33 is not an Hispanic plurality ward but it is very close because of the Anglo population in the north. It is 46.2 Hispanic and 48.8 voting age population white, 2.4 voting age population black. However, it is a 53.2 majority Hispanic population and a 41.1 total white population within that ward.

If the Court please, I would present Defendants' Exhibit 260, which are essentially the figures which have been extracted which identify what I have just stated.

[4140] THE COURT: You keep entitling these "Compromise." Who are you compromising with?

MR. HARTE: That is not "Compromise." That should be stricken.

THE COURT: I will strike it.

MR. HARTE: Thank you, your Honor.

THE COURT: It is your attempt to comply with what I decided.

MR. HARTE: That is correct.

THE COURT: I might say I did not consider any compromise proposal when I was making my decision even though, as I told you in chambers one time, I did see a newspaper article as to what the City had offered.

MR. HARTE: Yes, sir, that was my mistake. I should not have—

THE COURT: I did not pay any attention to it.

MR. HARTE: Thank you, your Honor.

THE COURT: Do you have some objections, Miss Martinez?

MS. MARTINEZ: I do, your Honor.

Your Honor, the plaintiffs believe that this map fails to comply at all with the Court's order. The reason it fails to comply with the Court's order is the same reason that we are in court at all, and that is the primary consideration now as in the original November 30th map is incumbency.

Mr. Harte stated that it was impossible to do [4141] as the Court ordered on the Northwest side. We agree, to some extent, that it is impossible to have three voting age majority Hispanic wards on the Northwest side. It is, however, possible to have two. He made no attempt to do that. The reason he made no attempt to do that is because in drawing these maps he consulted not with the plaintiffs, but with the incumbents and with the political leaders of that area as well as the political leaders of the areas which have been affected.

The reason we have no agreement and the reason that this map fails to comply with this Court's order is the fact that it is a map drawn by the incumbents to save their own incumbency again, or at least, to minimize the impact of this Court's remedy on those areas.

Your Honor, the first step that is taken by the City Council in terms of drawing their map, both this map and the November 30th map, is to plot the addresses of aldermen and the committeemen. Wards are drawn around those addresses. That is exactly why this map does not have two Hispanic majorities on the North side when it is easy to draw such a map.

The second thing they do, your Honor, after determining where incumbents will live and where committeemen live and what their turf is going to be, is to decide who the good aldermen are and who the bad aldermen are.

[4142] Danny Davis, a black alderman, a plaintiff in this case, is a bad alderman. His area gets changed so that he has got a new area to worry about and a difficulty in getting re-elected.

Alderman Marzullo is a good alderman. Your Honor, in terms of the changes that were made to the 25th Ward

the City Council did not do as the Court suggested and, as we have advocated, which is a line going east to west along 16th Street to put the Pilsen community in one ward. The reason the City Council did not take the Court's suggestion in doing that is because Alderman Vito Marzullo, a good alderman, would then have his ward cut and would divide his home from where his ward office is, where his friends around the 24th and Oakley area are. Therefore, the map did not get changed in that manner.

In order to reward good aldermen and penalize bad aldermen, this map was drawn.

With regard to the Northwest side, your Honor, it is indeed possible to have two wards over 60 percent. While the City Council and their attorneys were working on a map, your Honor, we also were working on a map.

Let me note, your Honor, for the record that there was not any negotiation in terms of real negotiation on this map. We were presented with a map and that was it. We discussed what our concerns were but never saw anything [4143] realized in terms of any real compromise or any movement on the part of the City Council in terms of trying to accommodate the concerns of the plaintiffs, both the black and Hispanic plaintiffs, your Honor.

In terms of the Northwest side, your Honor, we have drawn a map which more closely complies with what the spirit of your order was rather than the exact letter of your order. While you ordered three voting age majority Hispanic wards on the North side, two are created easily on our map, your Honor. The 26th Ward has a total Hispanic population of 65 percent and a voting age population of 58.8 percent. The 31st Ward has a total population of 59 percent and a voting age population of 52 percent. There is a plurality ward, the 32nd Ward, which has a 50 percent Hispanic population and a 41 percent Hispanic voting age population.

THE COURT: How much?

MS. MARTINEZ: 41.6 percent voting age.

THE COURT: 41?

MS. MARTINEZ: That, your Honor, comes more closely into line with what this court ruled as a remedy in this case.

This map also, your Honor, would do as the Court suggested and changed the ward line between the 25th and the 21st Ward to an east-west line to allow Pilsen to [4144] remain in one ward. The problem, of course, with that configuration is that there are no incumbents in the 25th Ward under our map, a major problem for the City Council, which is concerned with protecting themselves and their positions within the City Council.

THE COURT: That is just a community consideration, not a language group consideration?

MS. MARTINEZ: Not at all, your Honor. It is a consideration in terms of a remedy for the violation of the Voting Rights Act.

The Pilsen community is the most concentrated Hispanic area in the city. If your Honor is to try and determine where the four wards which you have determined to be fair to Hispanics are to be, then Pilsen is an obvious location for one of them.

THE COURT: What is the population in the 25th as you configure it or as you construct it?

MS. MARTINEZ: The total population of Hispanics is 72.9 percent and a voting age of 64 percent.

MR. HARTE: What is that?

MS. MARTINEZ: The 25th.

THE COURT: I left the 25th as it was. It was a strong plurality Mexican ward, was it not, on the City map?

MS. MARTINEZ: That is correct.

There were some lines adjusted under Mr. [4145] Harte's proposal to the Court this morning. However, what the Court has suggested but had not ordered was that the City Council, if it could, accommodate what has been the suggestion of the Velasco plaintiffs in terms of the creation of a ward, a Hispanic ward which took into

consideration and respected a community area which is recognized, your Honor, throughout the City as a community. That, again, your Honor, is easily done. There is nothing difficult about it.

We have done this and we have presented it to the City Council as early as August, 1981, your Honor. It has never been given any consideration because of the fact that there would be no incumbents in that ward.

The fact of the matter is, your Honor, that in the City Council's way of redistricting, the addresses of 50 aldermen and committeemen are more important than the addresses of a half a million Hispanic residents of the City. That, your Honor, also is important in terms of the Court's consideration of relief because this Court did order four majority Hispanic wards in the City in terms of voting age. This map would create four, two on the North side and two on the South side.

We changed the 22nd Ward to be more in conformance with the 1970 ward lines and more in conformance with the community area known as Little Village.

Again, your Honor, the 22nd ward line under [4146] the November 30th map was drawn specifically to reduce the Hispanic concentration in that area. We have changed the lines back closer to what they were in 1970. In fact, the new City map is closer to the configuration than the November 30th map. Under this map the 22nd Ward is 78.8 percent Hispanic and 72.3 percent voting age.

THE COURT: What was that voting age again?

MS. MARTINEZ: 72.3.

THE COURT: Your 22nd Ward configuration isn't substantially different from Mr. Harte's, is it?

MS. MARTINEZ: That is correct, your Honor. Either our configuration or this morning's City Council proposal would be fine with us.

MR. HARTE: May I ask pertaining to this. Does the Court have these figures?

MR. MINER: Those figures aren't correct, Bill, in terms of the final dawn. Those were what we gave Kim as of 6:00 o'clock.

MR. HARTE: Yes, what happened, your Honor, is we sought to get their proposals and put them in our system and get the figures back. I was just inquiring, if there is going to be comment about them—they are not definitive.

THE COURT: They are not what?

MR. HARTE: They are not definitive. Apparently there have been more changes made.

[4147] I believe that Mr. Miner is accurate in stating that the figures Ms. Martinez is giving you are accurate.

MR. MINER: Your Honor, perhaps to clarify one point and put it in perspective since Ms. Martinez didn't explain how this was done.

The blue numbers are identical to the City's map. What was done was a border was drawn isolating all areas that could be left totally alone. So, the numbers for those are identical. Originally it was a little smaller. The light green areas mean that there was a ripple effect that caused an adjustment of less than a tract, census tract. So, we can't say they are identical but there is a very modest adjustment within that one census tract. The red letters are the letters that are the same. As to the Hispanics, the numbers turn out to be very similar to the alternatives that were presented before with some minor adjustments.

That is generally what the coding means, your Honor.

THE COURT: Are the plaintiffs proposing this map that you have up on the easel there?

MR. MINER: All the plaintiffs have tried to take your proposals and what they did was simply to try to draw two majority voting age Hispanic wards—you ordered four— [4148] so, we could draw two on the North side and two on the South side and having done that, then tried to draw the rest of it with as few changes outside the 37th Ward area and the 5th Ward area would be made on the neighboring wards.

THE COURT: You mean 15th.

MR. MINER: The 15th Ward and 37th Ward had to be redrawn and obviously there would be some effect around those wards but we tried to minimize that effect.

MS. MARTINEZ: In your Honor's ruling you stated that the voting age population would be a fairer method of determining majority wards and with regard to the Hispanics specifically discussed on the North side, a 55 and 54 percent voting age majority in two wards. Mr. Harte's proposal this morning makes no effective change in terms of the political rights of the Hispanic residents of the North side. The only voting age majority is the 31st Ward, which was a voting age majority previously. The other two wards are not voting age majorities.

This map comes closer to the spirit of your ruling, if not the exact letter, in terms of having four majority Hispanic wards in the City and one Hispanic plurality.

There are voting age majorities also in the black wards, black voting age majorities in the 37th and in the 15th Ward, also, your Honor, with an attempt by plaintiffs to minimize the number of lines and of population [4149] shifts necessary in order to comply with this Court's ruling.

We feel, your Honor, that this map is more appropriate and more closely follows this Court's ruling and the intent to try and remedy the violations of the Voting Rights Act which this Court found in terms of both the black and the Hispanic residents of the City of Chicago.

Your Honor, I apologize if I have raised my voice. You may not know what everybody else in this courtroom knows and what half the City knows. I live in Pilsen and I know what it means to have no political power and to live in a community which is absolutely powerless in terms of its elected representatives.

This map, your Honor, would give Hispanics throughout the City an effective voice in our own government.

THE COURT: What happens to the 1st Ward? Do you have the figures, the voting age population figures in the 1st?

MS. MARTINEZ: It is no longer a Hispanic ward.

THE COURT: Well, it was a minority 27 percent voting age population under the City map. It is pretty evenly split between all three groups.

MR. MINER: It remains basically in that configuration.

MR. HARTE: Pardon me?

No, it becomes a majority black ward, your Honor.

THE COURT: Majority black ward?

[4150] MR. HARTE: Majority black ward.

MS. MARTINEZ: It becomes 55 percent black with a voting age population of 48 percent.

MR. HARTE: Essentially that is the 20th black ward.

MR. MINER: Your Honor, that is based on the early drawings which we were not focusing on, the 1st Ward, the final configurations of adjustments in the 1st Ward.

We offered to sit down and talk to Mr. Harte early on last evening. There were no discussions. So, we simply gave him a drawing. In some areas that we weren't really focusing on there have been subsequent readjustments. One ward has been subsequently redrawn. The 1st Ward, the 23rd Ward, there were a number that were not the focal point of our efforts and they have undergone changes.

MS. MARTINEZ: It remains a black plurality ward, is that correct?

MR. MINER: No, I believe it is a plurality.

MS. MARTINEZ: A plurality.

MR. MINER: I believe that is what it comes out to be.

MR. COLMAN: That is what it was before. That is what it is under the City Council's map.

MR. MINER: We tried to draw a plurality with the same—and that was not a focal point.

THE COURT: It was a small black plurality ward on the City map but it was pretty evenly divided between

all three [4151] groups. Now it is, as I understand it, a 55 percent black population and a 48 percent voting age population black.

MR. MINER: No, your Honor. Those figures were based on a preliminary drawing that we had given to Mr. Brace last evening. There have been subsequent changes. Our effort was to keep it as a plurality ward similar to what it was before. I think we have come—in the final version we have come pretty close to that.

We don't have the precise final numbers on the 1st Ward because we just finished that. We could have those very shortly.

THE COURT: That 48 percent voting age population is not correct, then, is that what you are saying?

MR. MINER: That is my understanding. It is lower than that.

THE COURT: I did not think there was any reason to change the 1st Ward.

MR. MINER: No, we hadn't intentionally. That is what we discovered after we had done the others. Obviously, there is some impact that you don't anticipate and you have to make subsequent adjustments. We were off in the 1st Ward and we were off in the 23rd Ward substantially. We had to make adjustments in those two areas as a result of the work we were doing in the 15th Ward. So, we have tried to correct that. We tried to keep as close to the original balance as [4152] it was before.

MS. MARTINEZ: The change in the 1st Ward, your Honor, is a result of changing the line in terms of the 25th Ward, and including the Pilsen community totally within the 25th Ward. That results in a shift of population to the 1st Ward.

THE COURT: It was my finding that the 25th could remain as it was and still be fair to the Hispanics but that was on the assumption that other wards could be changed so that there would be four majority Hispanic wards, voting age population wards.

MS. MARTINEZ: That is right, your Honor.

THE COURT: I did make a suggestion that it would be perhaps a little fairer to have the line horizontally but I did not make that part of the order.

MS. MARTINEZ: No, your Honor, but in view of what we have now seen in terms of the ability to have three majority voting age Hispanic wards on the North side, we are asking and we have prepared a motion for reconsideration of the remedy in this case.

(Document tendered to the Court.)

MS. MARTINEZ: We are asking now, your Honor, that this Court make changes to the City Council map based on what we have presented in Court this morning, which more closely complies with the Court's ruling and the finding that [4153] fairness would require four majority Hispanic wards and the addition of the 37th and 15th Wards as majority black wards.

THE COURT: Apparently there isn't any incumbent that would be living in the 25th, is that correct?

MS. MARTINEZ: That is correct, your Honor.

THE COURT: How about in the 1st? That incumbent would be living in the 1st, wouldn't he?

MS. MARTINEZ: Yes, Alderman Marzullo lives in the 1st Ward. I'm not sure where—excuse me—I mean, Alderman Roti remains in the 1st Ward. I'm not sure where Alderman Marzullo—

THE COURT: Why couldn't the 25th Ward be made into a Hispanic majority voting age population ward without drawing the line horizontally but by moving it in some direction other than that, maybe east?

MS. MARTINEZ: That is what the City Council did this morning, your Honor. That continues to fracture the Pilsen community.

THE COURT: That is right. They make it a 55 percent—

MS. MARTINEZ: The City Council moved the line a little further east to include more Hispanics within that area,

your Honor. But the primary concern was not the remedy for violations of the Voting Rights Act in terms of the Hispanic. The primary consideration is still protection of incumbents in that map.

[4154] THE COURT: But they make it a 59 and a half percent voting age population Hispanic ward, the 25th.

MS. MARTINEZ: That is correct, your Honor.

THE COURT: The 22nd is a 69 percent. So that equity is certainly accomplished that way without—

MS. MARTINEZ: Your Honor, it is still in violation of the Voting Rights Act. There remains a sufficient Hispanic population on the eastern end of the Pilsen community which becomes a very small minority in the 1st Ward. Your Honor heard the testimony of the residents of the 1st Ward that the alderman of that ward does not pay any attention to them because they are only, right now, 30 percent and under this proposal even a smaller percentage.

There remains a remedy for those Hispanic citizens who live on the eastern part of Pilsen, which is not addressed at all in the City Council's map. There is no attempt to address the rights of those people in this map. In fact, this map is to the detriment of the rights of the residents of that part of the community for no other reason than to continue to protect the incumbents.

It is a serious problem, your Honor, in view of the fact that there are considerable problems in terms of housing, in terms of fire protection in that area. There have been in recent years, arson as well as other problems which plague the area, overcrowded schools. All [4155] those are issues which should be brought to the attention of the City Council through the alderman representing that area but they are not.

You heard the testimony of Mr. Monte Jano, President of Pilsen Neighbors Community Council, that Alderman Roti refuses to go to community meetings to discuss those various issues.

This map continues to divide that specific community organization but a number of other community organizations which are attempting to try and rectify the problems which exist in that community and which are going to continue to exist if this map is accessed by the Court.

THE COURT: Alderman Roti did accede to at least one of the requests of the Hispanic community, as I recall, by obtaining a library in the area where the Hispanic—

MS. MARTINEZ: Your Honor, there is no library in Pilsen.

THE COURT: Maybe it has not been established yet but at least the location was agreed to, as I recall the testimony.

MS. MARTINEZ: No, sir, as far as we know there have been no definite plans to build a library, which the community has been fighting for for over a year.

THE COURT: Are you saying that I do not remember the testimony correctly or that the testimony was not correct?

[4156] MS. MARTINEZ: I am saying that there has been a decision to build a library and it is not built and there are no plans that we are aware of in terms of a location and a building and of the number of books to be included in that library.

THE COURT: Let me ask you just one other question. Maybe you have not finished yet but on the map that you have presented are there any fractured precincts or are they all done by census blocks?

MS. MARTINEZ: They are all done by whole precincts. There are no split precincts.

THE COURT: Are they done by census blocks primarily?

MS. MARTINEZ: Not census blocks but by precinct, political precinct, which is what I understand the Board of Election Commissioners goes by in terms of their work.

THE COURT: So, you had to use the defendants figures in deciding on what precincts to move around?

MR. ZAIDEMAN: Your Honor, I just inquired of Mr. Miner. I am not sure that we can state—

MR. MINER: No. I don't believe that that—there are some adjustments that would probably, as I understand it, take a very short time to make depending on modest adjustments to satisfy all the precincts.

As I say, in the majority of wards the lines are identical to the City. So, in those cases there would be no problem. In areas that would have to be adjusted there would [4157] have to be further refinements simply to comply with precincts.

MS. MARTINEZ: They are whole census tracts.

MR. MINER: We used census tracts and blocks and, by and large, they are the same. We would have to sit down and quickly, within an hour or two, go through those records and make sure that there are no problems.

THE COURT: You would not split precincts?

MR. MINER: We didn't intend to, no, your Honor.

Our position was that there may well want to be some discussion to be sure and to make some last minute refinements and those last minute refinements have to be what you would use to identify precincts, the final precinct borders.

THE COURT: All right. Have you concluded your presentation?

MS. MARTINEZ: Yes, your Honor. I have nothing further but I believe the Justice Department has something to say about this map.

MR. BERMAN: Good morning, your Honor.

THE COURT: Mr. Berman.

MR. BERMAN: I had hoped to be able to present one map and have everybody in agreement this morning. I regret that that is not possible.

I further regret that we are probably now further away than we have been in the last two or three weeks in

[4158] reaching some other sort of agreement as to what the Federal law requires for the City of Chicago.

The Court's order was equitable in regards to the 19 black majority wards, four Hispanic majority wards. It found that the plan adopted in 1981 evidenced retrogression from the City's plan used in 1970.

The City Council now comes forward with a plan that in the 15th and the 37th Ward still evidences that same retrogression that this Court found two days ago. Granted they have upped the percentages but a 52.6 voting age population does not comply with the spirit of this court's order.

The Court very clearly found that a minority population, the blacks in the City of Chicago, had achieved a status of a substantial black majority in two wards. As the record clearly indicates, they had a 76 percent total population in the 37th Ward. It dropped down to 38 percent in the plan that was adopted but that plan is no longer valid. The court found it to be violative of Section 2. Thus this court must compare what the City Council's plan in 1970 was with what proposal they are presenting today. It is still retrogressive. It is a little better but we do not feel it complies with the spirit of what this Court ordered two days ago.

In that same regard the Court ordered four [4159] Hispanic majority wards, three on the North side and one on the South side. We agree with Mr. Harte that given the demographics, the population dispersion that it is not possible to draw three Hispanic voting age population wards on the North side. Thus the suggestion was, in order to comply with the Court's order, two on the South side and two on the North side. What the City Council comes in today and presents is one on the North Side. There wasn't an attempt by the City Council to come close to complying with this Court's order.

The suggestion was made to change the 25th Ward, which this Court found was a permissible ward under Section 2, to make the adjustment in that ward to turn that

ward into a majority ward and, in essence, to exchange, as the Court noted, a strong Hispanic plurality ward in the 25th Ward to one of the wards on the North side. The United States feels that that would be in compliance. Maybe not with the letter of this Court's order but certainly within the spirit that this Court ordered as the remedy two days ago.

The time is growing short, your Honor. Mr. Levinson at the end of the day on Tuesday stated that the deadline was either this afternoon or tomorrow morning. We are still willing to attempt to achieve some sort of accommodation with, perhaps, taking the plaintiffs' proposal, making adjustments that the City Council may feel is necessary, [4160] moving lines to accommodate the ease of administration of the election, if there is a precinct line cut, but the basis for that accommodation must be a plan which meets the violation and somehow comes close to conforming to this Court's order of two days ago.

There is no doubt, I think, in anybody's mind that incumbency did play a factor. The Court was correct in its order of two days ago to say that that was a primary consideration. The Court also found that that consideration transgressed the voting rights of minorities. What the City Council presents today does exactly that same act. It takes incumbency and weighs it as a higher factor than the voting rights of minorities. The Federal law does not permit that.

It is clear, I think, that the plan the City Council is presenting merely on the numbers does not comply with this Court's order. This Court ordered four Hispanic majority wards in voting age population. The City Council's plan does not have that. This Court ordered a plan which created 19 black majority wards which did not evidence retrogression from the 1970 plan. The City Council plan does not have that.

The City Council's plan does not afford the equitable remedy that this court ordered. It is improper in conformity with this Court's order and with the Voting [4161] Rights Act. Probably most importantly, it is unfair. It

goes against the fairness that should be evidenced following the violation or upon the finding of a violation.

We have not proposed a plan throughout this entire litigation. It is not our intent to propose a plan at this time. Our intent, though, is to attempt to achieve some accommodation. We feel that it can best be accommodated either through the Court ordering a plan based on the plaintiffs' proposal or requiring the parties to meet today and to achieve some compromise based on the plaintiffs' plan by 4:30.

We stand willing to work to attempt to achieve some sort of agreement, to achieve some sort of compliance with this Court's order but we feel that the basis for that compliance must be a plan which meets at the outset the requirements that the Court set out, otherwise we are in the same posture where we were on October 19th.

The Court provided very specific directions, 19 majority wards which did not evidence retrogression from the 1970 plan and four Hispanic majority wards. The City Council did not comply with that.

The Court is well aware that our position consistently has been that reapportionment is essentially a legislative matter, that it belongs within the province of the legislation but only so long as they are willing to comply with the law. If they are not willing to comply [4162] with the law to meet the requirements that this Court has set forth, the case law is clear that this court has the power and it has a responsibility of enforcing the requirements of the Federal law on the City Council.

The United States believes that an agreement is much better than an order but if it is an order that is necessary, this Court has that power to order the Council to meet the requirements of the Federal law. Once again, the options that this Court has are many. If the Court finds that it would prefer to have some agreement between the parties and if the parties are willing to state that they are willing to take as a basis a proposal which this Court would find meets the requirements and work with that to accommodate the interests that a legislative

body has and surely incumbency is one of them but it is not important enough to override minority rights.

THE COURT: Why do you say the City's proposal is regressive as far as the black minorities are concerned?

MR. BERMAN: Your Honor, for instance, in the 37th Ward the 1970 plan had a black population of 76.3 with a voting age population of 58.7 and similarly in the 15th Ward it was 66.3. Now, what the Council has done is the Council has attempted to minimize to the maximum extent possible the changes that had to be made and in doing so they have created a plan which facially meets what the Court's [4163] order said, a voting age population majority in those two wards, but it is such a bare population majority that you could argue that it is not there at all. One percent of the population is 600 people. We are talking about a ward which is 52 percent voting age. That is 1,200 people. That is the black majority in the 15th Ward.

THE COURT: I see what you are talking about. But I was not comparing the percentage of the black or the Hispanic population in the old ward lines because those wards were not constitutionally viable any longer, as you know. I was comparing, really, the number of wards that the minorities have been able to occupy and become a majority in, not whether they were a large majority or a small majority but where they had a reasonable opportunity of acquiring a representative of their choice.

MR. BERMAN: I understand, your Honor.

THE COURT: It seems to me that the City has done that as far as the 15th and the 37th Wards are concerned. I do not have any reservations about the propriety of their complying with the order as to those two wards.

Incidentally, those two wards were selected partly because the government had emphasized them as ones that were the most adaptable to this kind of redistricting but also because they had been black majority wards before the redistricting.

[4164] MR. BERMAN: That was a point that we were trying to make throughout the case, your Honor, was that they had experienced that transition.

THE COURT: That is true. But I don't think that one needs to fine tune the matter to the point of restoring a percentage of black population in a ward which was not constituted in accordance with the requirements of one man/one vote in order to be equitable. I think that is going to the point where you are splitting—I wouldn't say splitting hairs, because that is not a very good description of it—but you are overlooking the substance of the matter or the equity of the matter for the details, which are not really the reason why there was regression, in my opinion.

I do not know whether all the parties will have finished with their presentation or not but it does seem to me at this stage, at least, that the City's proposal with respect to the 15th and the 37th Ward is fair to the black minority.

Are you going to have some time—

MR. COLMAN: I would like to just speak to that one question, your Honor, very briefly.

THE COURT: Maybe Mr. Harte is going to want to respond and, if so, I think we had better take a recess.

Do you want to have a few minutes?

MR. HARTE: Yes, your Honor.

[4165] THE COURT: I do have a 12:30 engagement. I did have one at 12:00 o'clock, but I have cancelled that. It was only to get a haircut anyway, which probably can wait until after Christmas. But I am going to take a ten minute recess for everybody's comfort.

(Whereupon a recess was taken, after which the following further proceedings were had herein:)

MR. BERMAN: Your Honor, if I could have just one brief moment.

In our proposed memorandum, which the United States filed we have attached copies of several letters issued under Section 5 of the Voting Rights Act. I would like to direct the Court's attention particularly to Tab 8, which was a letter which involved the redistricting of the New York City Council. In that letter we point out the procedure which was used in determining whether retrogression had occurred. It is the 1980 census analyzed by the lines which were then in effect, which would in this case be the 1970 ward lines. That is the standard that is used in retrogression—"retrogression" as everybody has stated, is a term of art which evolved from Section 5. The use of the latest data, latest census data under the plan then in effect is the traditional way of measuring retrogression. It is the standard that the Attorney General has used ever since the concept [4166] was introduced in the case of Beer vs. United States. This is a concept that the Court's have used in analyzing retrogression. It has become the technique. As the agency assigned the responsibility of enforcing the Voting Rights Act, the Attorney General's use and methods would be entitled to great deference. This has been emphasized, particularly in a voted case which was Board of Commissioners vs. United States, and they cite Udall vs. Tallman, Board of Commissioners is 435 U.S. 110 and Udall vs. Tallman is 380 U.S. 1. That is just to point out the appropriateness of using 1970 lines with the 1980 census data as the benchmark for measuring retrogression.

Thank you, your Honor.

MR. COLMAN: Your Honor, I will try to be brief.

I think what Mr. Berman is referring to is the retrogression within the 15th Ward and the retrogression within the 37th Ward.

THE COURT: Yes, I understand that.

MR. COLMAN: That is a very important function because, your Honor, even if the number 19, in terms of black majority wards, was given some kind of magic meaning, I think all of us agree and I hope your Honor agrees

that if one of the 19 wards had been 85 percent or 90 percent black and the City made it 30 percent black and then as a compromise or a settlement gesture or as relief made it 50 percent black or 52 percent black, the people in that ward still are being deprived of the meaningful opportunity guaranteed to them by the Voting Rights Act. That is what the situation here is with regard to the 15th and the 37th Ward.

The 15th Ward in 1980, prior to redistricting, was 66 percent black with a voting age population of 60 percent black.

Your Honor, in 1979—

THE COURT: Wait a minute. The 15th Ward?

MR. COLMAN: The 15th Ward under the 1970 lines with the 1980 population was 66 percent black prior to redistricting and the voting age population of that ward was 60 percent. That ward was constitutional to the extent that the alderman from the 15th Ward, who is over at City Hall right now, was elected out of that district that was 66 percent black in 1979.

THE COURT: But it had 72,255 population.

MR. COLMAN: That is right.

THE COURT: It is a fortuitous comparison, in my opinion.

MR. COLMAN: It is the comparison that, as Mr. Berman has indicated, the Justice Department uses. It is the comparison that Judges Cudahy, Bua and Grady used in the State Legislative case.

THE COURT: I don't know what the situation was in [4168] New York because I don't recall that letter in detail.

If the ward were a constitutionally constituted ward when you superimpose the 1980 population on it then the question of regression means something much different than if it is a ward with 72,000 or, in the case of the 37th, 77,000 population in it.

MR. COLMAN: I understand that, your Honor.

Let me say something else—

THE COURT: I don't think that a ward of that size or of that composition is entitled to have the same percentage or substantially the same percentage of black residents or black voting age population as it did when it was 77,000.

MR. COLMAN: Let me just say in addition with regard to this question—and your Honor knows the 37th Ward went from 76 percent to 36 percent and it now is also at the 60 percent level. Both the 15th and the 37th Wards are 60 and 61 percent under the proposal that the City Council has presented today. What I say to your Honor—at least assuming for the sake of argument—put aside what the percentages were prior to redistricting, and put aside the so-called 65 percent rule, which was testified to by the City Council's own expert, Mr. Brace—putting both of those considerations aside there is a third very important consideration that we think warrants a finding that this relief is inadequate.

[4169] Before the case started there was a stipulation. That stipulation, number 113, was that each of the black aldermen currently serving on the City Council was elected from a ward in which black persons comprise 62.6 percent or more of the population according to the 1980 census. Your Honor, the fact of the matter is—and the City Council and various alderman who participate in drawing the relief that is proposed to the Court all knew this—that the history and the evidence in the City of Chicago is that blacks do not get slated in white majority wards, blacks do not get elected in white majority wards and, as Dr. Guterbock, again one of the City Council's own experts testified, the white power structure in wards like 37 and 15, the emerging wards, hang on. There isn't a person in this room today who is going to tell you that in a 61 percent ward the blacks are going to have a chance to elect a candidate of their choice. The white organization in those wards is going to slate the incum-

bent white alderman and they are going to win. That is a fact that we can all check out on February 22nd if you are not going to grant us this chance for better relief.

Finally, your Honor, our position is that in constructing the 37th Ward in the way that they did there was a purposeful attempt to harm the chances of a plaintiff in this case, Mr. Davis in the 29th Ward, by removing much of [4170] his constituency from the 29th Ward. We think that under no circumstances should the City Council's proposal be adopted as relief without an evidentiary hearing, without an opportunity for us to confront and cross examine the aldermen and committeemen who were responsible for drawing these configurations and we would ask that at the very least we be afforded that opportunity.

THE COURT: The black voting age population in the 29th Ward is 85 percent.

MR. COLMAN: That is correct.

THE COURT: That is the 29th Ward that you say is being harmed by the reconstitution of the 37th Ward.

MR. COLMAN: Your Honor, he is going to have a black opponent, Committeewoman Iola McGowan—

THE COURT: Oh, well—

MR. COLMAN: No. I am just telling you I don't think it is appropriate in a voting rights case for a committeewoman or a committeeman to be consulted in terms of what the relief should be that the Court is going to order and that a person who has the courage to come into Federal Court as Alderman Davis did to challenge what his colleagues have done is going to get redistricted in such a way as to eliminate half of his prior constituency. I think, at the very least, in an evidentiary hearing your Honor should be able to hear how these configurations were arrived at.

[4171] We certainly object to a new ward map being adopted as proposed by the City Council without us having a chance to have it placed into evidence under the procedures that are followed in the Federal courts where

we would have a chance to inquire of the witnesses how particular configurations were drawn.

MR. MINER: Your Honor, I would like to make just one point.

You have raised the question of being unfamiliar with the factual background in these retrogression cases. The fact is that in virtually every one of them the reason that the case was in court was that there were massive overpopulation and under population. The best example is the Fifth Circuit case we cited called Moore, in which there had been a major population adjustment. I think it was a county has redistricted in a way in which all of the black majority units, districts—they called them something else, I think, in Louisiana—remained majority black. They had each, though, been redistricted in a way that that black majority had been reduced. The Fifth Circuit held that that was retrogression; that they had to redistrict each of those districts to get them back at least to the percentages they were, particularly when that retrogression took them from a reasonably secure position to a marginal position. The facts in that case are indistinguishable from this. [4172] On that basis, despite the population shift, the Fifth Circuit ordered them to at least get those percentages back to where they had been.

THE COURT: Mr. Harte, you said you wanted to have a few minutes to respond.

MR. HARTE: Yes, your Honor.

We get back, frankly, in my judgment, to the central theme of this case and, really, it isn't black, white, Hispanic at all. It's regular vis-a-vis independent and just who is going to serve, and not particularly the minority. You see that now with respect to the criticism of my activity with respect to Alderman Davis.

MR. COLMAN: I would just like to correct the record.

I wasn't criticizing any activity by Mr. Harte.

MR. HARTE: Well, you ought to.

MR. COLMAN: Well, I'm not.

THE COURT: It is pretty hard to distinguish between the defendants and Mr. Harte.

MR. HARTE: That's right, Judge.

THE COURT: After all, he has not had a whole lot of time to confer with anybody, I don't think.

MR. HARTE: Here is my point, your Honor: If you are to involve yourself into which black candidate will run within the 29th Ward, whether it is the independent, Alderman Davis—I have high regard for him—or a person selected [4173] by the organization within the 29th Ward, then I think you are separating yourself from what your prerogative is here.

THE COURT: I think that is correct. I do not believe I can or should get involved in the politics of the matter.

MR. HARTE: Now, the question of which black candidate serves in the Council or which white candidate within the 41st Ward sits in the Council or, for instance, whether Hispanics win within a ward that is majority Hispanic and majority voting age population really, gets to a point where you reach what the Congress said was not the concern of the Voting Rights Act and that is the determination of the specific person who gets back to the Council and proportional representation and maximization.

For instance, just for example, there is criticism, for instance, with respect to 22 and 25 from Miss Martinez. The Court itself, and I think appropriately, said with respect to Ward 22, which was formerly 65 percent Hispanic and a voting age population of about 59, that would be appropriate. I think anybody would say that. The effort, however, to increase it ten percent is criticized because now there is on the table, so to speak, or my compliance with your direction is 76 percent Hispanic, but that is really not enough either and it has got to be 78 percent.

[4174] MS. MARTINEZ: Your Honor, I made no criticism during my presentation. I said either Mr. Harte's configuration or our configuration for the 22nd Ward would be fine.

THE COURT: That is my recollection.

MR. HARTE: Now, let's pass to 25. In your remarks, your Honor, you indicated—although 25 was a plurality and a very strong one for the Hispanics—you would desire to see something done with respect to the 25th Ward. That was done. The only way you can do it, in my judgment, anyway, to create the voting age population that is desirable for them is by coming east in order to pick up, I think, almost 8,000 Hispanics on the bottom half of the ward and coming west this way (indicating).

Now, I did not, in configuring these changes, include Alderman Marzullo's home which is over here, and take him from the 25th Ward. I suppose I could but what would be the reason for it? It is not a question of whether he is a good alderman or a bad alderman or a mediocre alderman or an old alderman or a young alderman. It doesn't make any difference. The fact of the matter is, within the admonition of you to me, it was not necessary to do it. And why should I? If I took him there would be no alderman here, and that is probably what they desire because then a Hispanic can run and more easily win. But that really isn't your function, I don't believe, in identifying an environment which will [4175] permit them to put precisely the person that is desired by them into the Council.

What I did was to make the exchange between the 1st and the 25th. I could not involve the 2nd because it is all black. The 11th up here is all white (indicating). If you go this way it's black (indicating). You can only do what you can possibly do within the parameters that are given to you.

It is the fact that they perceive that I have not done enough but that is not unusual in redistricting, nor in this case.

Now, when we get to the Puerto Rican area—and let me say this about retrogression. Your Honor indicated that my defense with respect to retrogression, that is, an underpopulation of the black wards which required extension was improper and inappropriate. I accept that.

Hispanic ward and, as I understand the figures that is the only one. Although, there are majority population wards for Hispanics. Therefore, I find and I believe it is feasible to create another Hispanic ward in that area, as Ms. Martinez has demonstrated. She has, along with the other plaintiffs, devised a map that has a 52 percent voting age population in the 31st Ward instead of the 51.5, which is substantially what the City's figure is, and a 58 percent in the 26th Ward, which is just adjacent to the 31st.

I believe, however, that the City's proposal with respect to the 22nd and the 25th Ward is equitable and [4182] conforms to my findings. Although the Pilsen community is fragmented to a certain extent, as I said at the time of my decision, that is not a controlling consideration.

Furthermore, except for the 18 percent of the Hispanics who are in the 1st Ward the Pilsen community is going to be preserved and the two wards together are going to be, at least, in all likelihood Hispanic wards under the City's configuration. The 22nd Ward will have 69 percent Hispanic voting age population and the 25th will have 59½ percent.

I might add that the two other majorities in those two wards, namely, the blacks and the whites, are divided in such a way that I don't see any likelihood that they are going to have a candidate of their choice when the election is held.

So that during the noon recess perhaps you can check out the plaintiffs' proposals with respect to the 26th Ward, which is the only place, really, that there is a difference in figures—there is a difference in configuration, I realize that—and reach some kind of a line that can be drawn for the various wards that will be affected when those two wards become Hispanic majority voting age population wards on the North Side. I think the 26th must be the logical one because that is what Ms. Martinez has demonstrated. In any event, the demonstration satisfies me that there can [4183] be two Hispanic wards up there.

I might say that the reason I found regression or unfairness, let's say, with respect to Hispanics—and I think regression is probably not the right term—was that when the City Council made its map it did create four Hispanic wards but it did it on the basis of the figures which it had, which was gross population figures, and it did not use voting age population figures. Those are very important figures as far as Hispanics are concerned because the evidence shows that they are a younger age group and will therefore suffer more in equity if gross population figures are used.

MR. HARTE: Your Honor, I think that 2:00 o'clock would be a little too soon. I am wondering. Is the Court going to be in session tomorrow?

THE COURT: Well, tomorrow is a Court holiday.

MR. HARTE: I am sorry.

THE COURT: Also, Mr. Levinson, I thought, said that today was the last day this could be done. I would like to see it done this afternoon over the noon hour.

I could resume at 3:00 o'clock if that would be the preference of the parties.

MR. HARTE: Yes, your Honor, 3:00 o'clock.

THE COURT: I would rather see something worked out. Otherwise, I think I would have to make a decision on that [4184] area just as I have on the other areas.

MR. HARTE: Yes, your Honor.

THE COURT: So, if 3:00 o'clock will do it, we will recess until that time.

MR. HARTE: Thank you, your Honor.

(Whereupon further hearing in the above matter was continued until 3:00 o'clock p.m. of the same day.)

[4185]* IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	)	
vs.	)	No. 82 C 4085
CITY COUNCIL OF THE CITY OF CHICAGO, et al., *Defendants.*	)	

Before the HONORABLE THOMAS R. MCMILLEN, on Thursday, December 23, 1982, at the hour of 4:30 o'clock p.m.

The trial resumed pursuant to recess.

APPEARANCES:

MR. JEFFREY D. COLMAN
MS. JULIE C. REYNOLDS
MR. RICHARD H. NEWHOUSE, JR.

MS. VIRGINIA MARTINEZ
MR. ROBERT J. ZAIDEMAN

MR. JUDSON H. MINER
MS. BRIDGET ARIMOND

MS. SHERIBEL ROTHENBERG

MS. MARGARET C. GORDON
MR. ROBERT S. BERMAN

* Numbers in brackets refer to the pagination of the Official Court Reporter's transcript of proceedings.

MR. WILLIAM J. HARTE
MR. JEFFREY B. WHITT

MR. MICHAEL LEVINSON

MR. SAM RUFFOLO

[4186] THE CLERK: 82 C 4085, Mars Ketchum vs. City Council.

MR. COLMAN: I think, your Honor, that everyone is here except the people that you really want to be here.

THE COURT: I see. Well, as you were advised, they asked for a delay until 4:30, which did not involve you. I assume that this part of the proceedings has been concluded.

MR. COLMAN: We wanted to stay until the end, your Honor.

THE COURT: You are welcome to.

The reason you were not present during the telephone conference I had was we all assumed there was nothing further to be done in your part of the case.

MR. COLMAN: I have no problem with your having a telephone conference without me being involved.

I do not know where the rest of the people are.

THE COURT: I am sure they are on their way.

MR. COLMAN: I assume so.

I talked to Mr. Zaideman around 3:15. He said that they were supposed to be back here by 4:30.

Perhaps, while we are waiting, Ms. Rothenberg could sing the 42nd Ward fight song for us.

MR. LEVENSON: 43rd.

MR. COLMAN: 43rd.

MS. ROTHENBERG: Your Honor, Mr. Harte did sign on behalf of the City Council. I have distributed copies of the [4187] consent judgment to all attorneys of record present in court.

MR. COLMAN: I am sorry to say this again. I think we should wait for the others to get back here before your Honor would sign this.

I do not know what they are proposing in the area of 26 or 32. I am sure that ultimately the Pillman Intervenors are going to get what they want but I think it would be best to just wait and have the report back from the other people.

THE COURT: Well, of course, they can always make a motion to set aside the order. Apparently it does not involve any of the areas that the plaintiffs, PACI and the others, were involved with. There is no reason not to sign it.

MR. COLMAN: I think the only area that it would relate to would be the Hispanic area on the Northwest Side. I don't think that what they are going to be doing with 26 or 32 will impact on it.

THE COURT: That was my understanding when we had the matter up first. So, I will sign the order.

MS. ROTHENBERG: Thank you, your Honor.

THE COURT: You can now sing if you like.

MS. ROTHENBERG: Pardon, your Honor?

THE COURT: If you want to sing the 43rd Ward song, you can go ahead. Mr. Harte is here. So, he can listen [4188] and give his critique.

MS. ROTHENBERG: Well, if Mr. McNamara were here we would do a duet, your Honor, but since he is absent I'm afraid I won't. Thank you for the opportunity.

THE COURT: Mr. Cheek told me that in another case, when some of the defendants were singing, that he had difficulty transcribing it but I think that was partly because they were singing in Spanish. If Ms. Martinez wants to do that, she can try.

MS. ROTHENBERG: Thank you, your Honor.

MR. HARTE: Your Honor, I apologize for the delay. Believe me, we were working.

I can report to you, if I may proceed, your Honor.

THE COURT: Yes.

MR. HARTE: William Harte for the Council.

I can report to you that following this morning's session I returned and I can indicate to you what is now marked Defendants' Exhibit 258, the overlay—

THE COURT: You had another 258, which were these tabulations. You are up to 260.

MR. HARTE: This will be Defendants' Exhibit 261, your Honor.

THE COURT: All right.

(Whereupon said exhibit was marked Defendants' Exhibit No. 261 for identification.)

[4189] MR. HARTE: The overlay, your Honor, is Defendants' Exhibit 258 depicting the Northwest Side as it was this morning. On the base map you have Defendants' Exhibit 261, which indicates the changes, predominantly in the 26th Ward.

Now, in order to raise the 26th Ward to 50 percent or more voting age population it required an exchange of approximately 10,000 people and yet raising the Hispanic level. That was effected, your Honor, by the blue characteristic on Defendants' Exhibit 261.

You see on the eastern end of the ward the brown area. That is given to Ward 32. You see on the western end of the ward 26 taking a census tract from 31, the blue area here extending beyond the black line, and then also taking from 33 these three census tracts, which are predominantly Hispanic, which render 26 and raise 26 to a total population of 59,465 and a Hispanic population of 34,416, which is a 57.88 percentage. Now, that will be reduced by the voting age population to approximately 50 percent.

The reason I don't have the voting age population statistics for you is because they are in the computer and will be retrievable in about a half an hour to 45 minutes.

But you cannot simply forget it. New York is New York. Louisiana is Louisiana. Those facts are those facts.

Hypothetically, your Honor, you cannot ignore underpopulation with respect to retrogression because it is possible—for instance, where you have a ward that has lost 26,000 people, those people must be supplied someplace and where it is a black ward they should be supplied with black population and the extension should be made.

So, what happens is you must come west with respect [4176] to the underpopulation here and you must come this way (indicating). So, you must go south and you must come west to fill in these areas (indicating).

Now, is it a factor in retrogression to consider the underpopulation? Certainly. Because hypothetically you could have a situation where in 1970 or in 1975 you had 19 black majority wards and half of the population would leave the City. You would still have 19 black majority wards but it would be impossible to, again, make 19 black majority wards where the candidate that the black population desired to elect could win.

The point I make, then, is if it is not a defense totally to retrogression it is certainly a factor that can be considered with respect to the redistricting process and should be. Because 15 had, as you pointed out, 72,000 people. The underpopulation was to the east. So, the loss of population in that ward would necessarily, rationally and intelligently go east.

37, precisely the same (indicating). You saw the migration. So, the loss of population, if you will, from 77,000 would rationally and intelligently come to fill in these areas.

THE COURT: Not only that but the reason those wards became overpopulated was because of the movement of the black community to the west and the northwest.

[4177] MR. HARTE: That is right.

THE COURT: So that it is only logical that to correct the overpopulation the percentage of blacks may have to be reduced. I can't see that that violates the principle of retrogression to the extent that I found it to exist.

I did not base the finding of retrogression upon the change in the complexion within a ward, a percentage of 65 to 85 percent or anything of that sort. I based it on the number of wards that had been occupied by the black minority during that 10-year period.

MR. HARTE: Your Honor, much has been stated with respect to the Puerto Rican area, who I consulted. I consulted with respect to the 31st Ward Representative Barrios, who was elected in the last election from this very area, who is the Puerto Rican and the only Puerto Rican representative in the legislature in configuring this 31st Ward.

Now, it was my intention and is my intention to preserve that base not only for him but for Miguel Santiago, who is the candidate within the 31st Ward. Now, when you do that, when you make that configuration and seek to preserve that 31st Ward configuration, you address yourself to the other area. It was my judgment that 32, which stretched up north would not be the appropriate ward but 33 would to bring it down.

It is not true, as they state, that there has been [4178] nothing done in this area.

Your Honor, on this question of retrogression in your remarks—and it is true, as you state at page 4111: (Reading:)

> "Just taking gross population figures without any alternation or explanation, the Hispanics had a majority gross population in the 22nd, the 25th, the 26th and the 31st Wards."

Your Honor, under this proposal there is a gross population in 22, 25, 26 and 31. (Reading:)

> "There is a plurality in the 32nd Ward—"

these are your remarks. (Reading:)

> "—under the 1970 lines considered in 1980."

That is precisely what has happened with respect to this proposal. But added to that is the majority ward from 33. So, you now have added to the 1970 lines, as superimposed upon the 1980 population, in this redistricting process a gain in the Puerto Rican area, your Honor, of another majority total population ward.

So, you have now the 22nd, the 25th, the 26th, the 31st and the 33rd as majority total population and in 32 you have a plurality total population. You have a majority voting population in 22, 25, and 31. You have a plurality voting population in 26 and 32 and you have a very close difference in 33.

[4179] Now, in my judgment, recognizing the fact that I could not comply with your direction, they agree I could not comply. They have configurations which they believe in their judgment are in more compliance. I suggest that this is in compliance with the spirit of your direction and is certainly an advancement from the 1980 Census on the 1970 lines (indicating).

THE COURT: Do you think there is any validity to Mr. Berman's observation that given another day the parties could agree on a map?

MR. HARTE: Your Honor, I really have grave reservations. I mean, I would be happy to sit down with them and discuss it with them but I have grave reservations whether we can come to an agreement, specifically with respect to the Puerto Rican area.

I can state to you that contrary to your opinion and direction I enriched 22 beyond what you stated and 25 beyond which you indicated. If I were to go back to negotiating with my opponents—and I state that there are people involved in this thing on my side who have an interest in serving the people in these areas. Being an incumbent is not a mortal sin in this city, I don't think. I would have grave, grave reservations that anything would be forthcoming.

THE COURT: I have that same feeling. That is one [4180] reason I did not feel that remanding this to the

City Council would be the solution even though the Government made that recommendation.

However, I am going to have to recess for lunch. I did not realize that this was going to consume the length of time that it has. I will say this much, and perhaps this will help bring the matter to a conclusion: I feel the City proposal with respect to the 15th Ward and of the 37th Ward is a fair one and complies with my findings and my conclusions and that I would accept those configurations.

I am not properly to be concerned with who is going to be the alderman in any particular ward. My concern is whether or not the persons in that ward have a reasonable opportunity to select a candidate of their choice, and their candidate may very well not be an incumbent. My concern is that their candidate has a reasonable likelihood in the 15th and the 37th Wards of being a black. We all know that that isn't always the way it turns out because the 5th Ward is a prime example of that. However, with percentages of the voting age population that are shown in the City's figures, which are Defendants' Exhibit 260, I certainly think that the blacks have a reasonable opportunity of electing a candidate of their choice in both the 15th and the 37th as reconstituted, particularly in the 37th where the opposition, you might say, or minority groups against the 56 percent [4181] voting age population of blacks are split 30 and 10. It is more one-sided in the 15th, I agree, but the 15th is not the place where the plaintiffs have made their most vocal criticism. In the 15th there is a white minority of 40 percent voting age population and yet, on the other hand, there is a 52.6 percent black majority voting age population. That seems to me to satisfy the equitable principles that, I believe, are required by the Voting Rights Act and Section 2 of that Act.

I also must agree that there is a reasonable way to create two Hispanic voting age population wards on the north or what you might call the Northwest Side constituting the 26th and the 31st Ward. The City's proposal constitutes the 31st Ward as a majority voting age

It essentially does what you requested to be done and yet preserve the integrity of 31.

31 would now have a total of 61,555 total population with 35,859 Hispanic population and a 58.56 percent Hispanic [4190] population which, when reduced by the voting age population, would be essentially the configuration of 51 or a little less but over 50 percent, in any event, voting age population.

Now, 33 had to be changed because there is an exchange in the south area of 33 with 26 and also in exchange in the southwest portion of the ward with 31. In order to compensate for that, your Honor, 33 was brought east into the 32nd Ward. So, you have four census tracts being exchanged between 32 and 33. Those are not as heavily Hispanic census tracts, your Honor, which reduces 33 to a 50.41 total population, Hispanic population, in that ward.

32, then, in order to fulfill the exchange—as I explained, it must go around like this within the four wards so as not to involve any other ward—takes the eastern part of the 26th Ward and also part of the northern—part of the 26th Ward, which is essentially about a 10,000-person exchange.

32 then is raised to a 45.94 percent Hispanic population. When we get the voting age population figures, your Honor, if there is any fine tuning that has to be done, whether up or down or what have you between these two wards, it will be done.

THE COURT: Which two? The 32nd and 33rd?

MR. HARTE: The 26th and 31st, so as to fulfill your [4191] direction to give two 50-percent voting age populations to these two wards and essentially retain the plurality within the 42nd Ward, which would be Hispanic. The 42nd Ward would be an Hispanic voting age plurality.

THE COURT: 42nd?

MR. HARTE: Excuse me. 32nd. I beg your pardon.

Defendants' Exhibit 261 is the product of what we have done this afternoon.

I apologize for not having the computerized figures but it takes at least an hour to an hour and a half to turn those around and get voting age population.

THE COURT: Do you have any figures on the other two minority groups in the 26th and 31st? By "minority" I mean the whites or blacks.

MR. HARTE: White and Hispanic?

THE COURT: White and black.

MR. HARTE: No, your Honor. But I can give you the 31st, which has not changed substantially.

Under the Council plan this morning 31 had a 58.1 Hispanic total population and now it has a 58.26, which raises the Hispanics slightly, but the black percentage for 31 was 11.0 and black voting population was 9.4. So, essentially you have about a 36 percent white population in 31. Those figures will not be changed substantially at all because what we sought to do in conformity with your direction [4192] was not to affect 31 to any great extent.

Now, 33 will be changed because that Hispanic population was brought down. It will be a majority voting age population Anglo. This morning it was a 46.2 voting age population with a 53.2 percent total Hispanic. Having brought 33 down 3 percentage points as the total population, I would estimate that it would be about 43 percent voting age population and possibly about 49 percent or 51 percent Anglo. The black population in here is really not significant.

THE COURT: Were you just talking about 26 then?

MR. HARTE: 33, your Honor. Excuse me.

26, of course, we have changed substantially to bring up the Hispanic count there.

THE COURT: What I was wondering about is: Do you know what the percentage of voting age population of whites and blacks are in 26?

MR. HARTE: In 26, your Honor, it was 45.3 percent voting age population for Hispanic on a 54.0 total popula-

tion. Having raised that population almost 4 percent Hispanic you would necessarily decrease the others.

On the map this morning the black voting age population was 8.4 which, when added to the 45.3, essentially made the white about—I don't know—about 40 percent. It would be about 40 percent Anglo voting age [4193] population in that area. Again, I don't have the definitive figures for you.

THE COURT: It was 42.3 percent according to your exhibit 258.

MR. HARTE: Right, your Honor. That would be reduced to either below 40 percent or just—and the black voting age population might be increased slightly but certainly not significantly. Because, again, the question of black population north of Kinzie is really not significant. The black population, as the Court will recall, is essentially in this area (indicating).

THE COURT: The reason I asked the question about the other minorities is to see how they were split. If, for example, there were no blacks in the 26th or the 31st then it would be a very close division between the Hispanics and the whites but if they are 10 percent, which is roughly what apparently they are, then it is really not a very close split and the Hispanics would have a substantial advantage over the other two groups voting-wise.

MR. HARTE: That is correct, your Honor.

THE COURT: What happened to Ms. Martinez?

MS. MARTINEZ: I am here.

THE COURT: Do you have any comments on this?

MS. MARTINEZ: Of course I do.

Your Honor, I wanted nothing more over the past [4194] three months than to settle this case. We have still the same process going on. The aldermen and Mr. Harte and people will draw a map and we see it right before it gets into court. We did not engage in any negotiation. This map is not a result of negotiation.

Mr. Harte is wrong when he says that the Court—from what I understand of the Court's ruling—that the Court has directed two 50-percent wards. Two days ago your Honor recognized a need to have 54 or 55 percent voting age Hispanic wards on the North Side. What this map has done is to minimize the effect of the Court's ruling, again, to create a maybe 50-percent voting age, not majority, but 50 percent Hispanic voting age population, maybe, because we don't have the figures. I can't agree to anything without even having the figures.

Secondly, your Honor, we have shown through our map that we have presented this morning that it is possible to create wards which are closer to what the Court ruled two days ago, 55 percent voting age majorities, without impinging upon the majority population in the 31st Ward.

THE COURT: Where? 54 percent in the 26th?

MS. MARTINEZ: In the 26th Ward on our map it is even higher, your Honor, 58 percent, and the 31st Ward is 52 percent voting age majority.

THE COURT: That is what you said this morning.

[4195] MS. MARTINEZ: The 26th Ward on the new map produced by the City Council is 57 percent. Your Honor, in our 31st Ward where the total population is 59 percent Hispanic the voting age population is only 52 percent. If you reduce the total population down to 57 percent, it is questionable whether that is even a 50 percent Hispanic population, again, not a majority at all.

This Court stated that four majority Hispanic wards were fair. This map has not even attempted to create what this Court ruled two days ago.

This is the second time the Court has given the City Council a chance to correct the violation of the Voting Rights Act to remedy the discrimination against the Hispanic voters in the City. They have again failed to do it. We would ask your Honor that the map which we produced this morning for the 26th and the 31st Wards be ordered as a remedy to those violations.

tempt to redistrict within that area, your Honor, this is essentially what has to be done. As you can see, when she says 32 is reduced in the Hispanic count, in their 32 on Exhibit 400 you can see it very graphically. I haven't seen any statistics on their Hispanic or black map. Essentially their 31 and 26 are the most heavily Hispanic areas. That is essentially what we have attempted to accommodate by moving 26 west within their configuration of 26.

Now, I state that I believe that accommodated the Court's statement in that regard.

THE COURT: I do not quite understand, though, why it is not practical to construct the 26th and the 31st Ward substantially [4199] in the proportions that the Velasco plaintiffs are suggesting.

MR. HARTE: Your Honor, let me see if I can explain it this way. 37, which is the black-configured ward, comes to Cicero Avenue.

THE COURT: They don't move the west side of the 31st very much, do they, on Exhibit 400?

MR. HARTE: Exhibit 400?

THE COURT: Yes, the one you are looking at. From this distance it looks like it is substantially where your west line of the 31st Ward is.

MR. HARTE: Your Honor, it is almost a mile.

THE COURT: Is it?

MR. HARTE: Yes. You see, this line is Kostner, a half-mile. This line is Cicero (indicating). So, this entire area, your Honor, is moved east (indicating). Our 31st comes out to Cicero and takes this Hispanic area. Now, that means that 37 immediately adjoins our 31. 30 intervenes between their 37 and 31.

So, what, essentially, I am seeking to do is to configure the Hispanic configuration, keeping in mind 37 and keeping in mind 31, the traditional boundary of this ward. If you accommodate these two Hispanic configurations you

would have to redo the entire Northwest Side, as we presently have it.

[4200] You see, the Hispanic configurations of 31, 26 and 32 were superimposed into the plaintiffs' map. They have an entirely different approach to 30. I don't know the count but I can tell you that having come from North Avenue to Chicago Avenue, there is a substantial black population in here and Hispanic (indicating). 37 is substantially more black than the configuration of the Council. Then you move on east. That essentially is the difference.

What I say is when they say they can take their 31, 26 and 32 and simply place them on the map and not impact upon the black ward 37, it is just not accurate.

MR. COLMAN: I didn't mean to say that, your Honor. I am sorry. What I meant to say was while there may be a ripple effect, we know from Plaintiffs' Exhibit 400 that the black interests are not at odds with Hispanic interests and that the black 37th Ward can be accommodated through some adjustments. What I am saying is we have no objections to the configuration that Ms. Martinez has suggested to the Court. We think they comply with your Honor's order. If adjustments have to be made in 37 they can still be made and preserve your Honor's order with regard to 37.

THE COURT: Well, obviously, there is a substantial difference between the two versions. You see the 30th Ward coming down between the 31st and the 37th. I haven't seen any figures on any of those wards that I know of.

[4201] MS. MARTINEZ: Your Honor, we have the printout on the figures for the configurations that were presented in Plaintiffs' Exhibit 400. That is what I read from this morning in terms of the Hispanic population. If those are the figures that your Honor is referring to, I can tell you what the populations are in each of those wards.

THE COURT: I do not think any exhibit was offered on that, was it?

MS. MARTINEZ: No, it was not offered, your Honor.

THE COURT: All I am saying is I have not seen any figures.

MR. HARTE: Well, they gave us their map yesterday and we ran those figures on the map they had last night. They changed it this morning and we have not run figures on their map, your Honor, and I really don't know whether we can at this stage.

THE COURT: As I have observed before and as I am sure everybody is aware, there can be many different maps that can be drawn, a number of which would satisfy the various constitutional requirements. I think we are getting down to a point of no particular advantage to debate the merits between two different configurations because I think that the City's representation that the 26th and the 31st Wards will be configured so that there will be somewhat more than 50 percent voting age population by the time the final map [4202] is put into a Court order satisfies substantial fairness to the parties.

It has always been my belief that the job of drawing a map is basically not the Court's job but the responsibility of the City Council. What we have here, in effect, is the City Council's redrawing of Wards 26 and 31 and two other wards that impinge upon them.

Granted, perhaps ideally something better could be done with the 26th and the 31st Ward, as Ms. Martinez' figures seem to demonstrate, but I am concerned with the ripple effect that would occur on the 30th and the 37th and the fact that I am satisfied with the 15th and the 37th the way they were presented this morning. In fact, the only remaining problem were these two wards in the north part of the City. I think the proposal that has been made by the City is satisfactory.

Another thing that I think is significant—as I understand it, those areas, at least the 31st, is basically Puerto Rican. So that by definition all of the persons in that group—or not all of them but the vast number of them are eligible to vote. So that it is not as essential to have any additional voting power in that particular ward as, perhaps, in the wards down in the 25th and the 22nd area.

MR. HARTE: That's correct.

THE COURT: I am not sure about the 26th but I believe [4203] that is also heavily Puerto Rican citizens.

MR. HARTE: That is correct.

THE COURT: We also have to remember that although the Hispanics are, according to the evidence, a younger age group than the other minorities or the whites, that is a changing situation almost daily. The election will be almost three years from the time when the figures were constructed on voting age. I am sure that the figures would be higher today than they were three years ago. Certainly they will be higher five years or so when the next aldermanic election after this one is going to be conducted. So, we are on somewhat shifting ground and, more or less, changing every year. I think it can be projected to a certain extent how those changes are going to occur.

We know from the recent history that the Hispanic population is increasing rapidly in the areas where they are now located. If they have a 50 percent voting age majority today or did have in 1980, I find that they will have well over that not only by February but also by four years from February.

I think it is fair to the Hispanics to construct the map on the basis of the best information we have, which is the voting age count and which is what I found to be the failure of the City Council to take into consideration.

So, even though it may not be the best solution [4204] and certainly is not perfect, I will adopt the City Council's configuration of the 26th and 31st Wards and likewise the changes that would have to be made in the 33rd and the 32nd. I think that certainly gives the Hispanic minority or Hispanic majority, actually, in those two wards a very reasonable opportunity to vote for and even choose a representative of their choice, particularly since the other two groups are split in such a way that they are far in a minority. If you eliminate the very small minority of blacks, it is pretty close to the 65-35 division that has been talked about by several witnesses but never supported by any evidence.

As far as the factor for registration and turnout is concerned, I think I have said before but I will repeat that

the 1982 figures which the defendant put into the record satisfy me that that is a variable and a very controllable variation or factor. It can be overcome by various means of political organization, choice of candidates and the things actually that the Board of Election Commissioners have done to increase the voting by Hispanics.

I do not think it is the Court's function to get involved in these political considerations of organization, getting out the vote, getting qualified citizens to register. So that I think that the configuration which Mr. Harte has come up with is fair to the Hispanics on the North Side. I have already found that the other two wards, the 22nd and [4205] 25th, were fair.

I understand that will give the Board of Election Commissioners sufficient time to go ahead with the election as scheduled on the new lines.

MR. LEVENSON: Your Honor, I would presume that the legal descriptions would be filed with the Court. We would ask that the Court maintain continuing jurisdiction in the event, when we are preparing our maps and revisions of existing maps, to make any corrections that may be necessary and, if we do run into some problems, to be able to come into court. It is massive as it is now. We are already behind time. This Court has been very sensitive to our problems and we appreciate that. But as we understand it, and based on the cooperation we have received, we are having a crew working on this holiday weekend. We anticipate we can make it. But if this Court will reserve continuing jurisdiction so far as administration is concerned, then we always have the opportunity to come back if we do have any problems.

THE COURT: Yes, I will. Although, tomorrow is a court holiday. We will certainly be in session on Monday.

Mr. Harte has represented that he is going to possibly make some additional changes in the 26th and the 31st to make sure that there are in excess of 50 percent voting age population Hispanics there.

[4206] MR. HARTE: Yes, sir.

THE COURT: So that the final lines are going to be somewhat subject to change.

I will also entertain any motions if the parties feel that they can agree on some somewhat different configuration in time for the Board of Election Commissioners to put it into effect on the election day. They can always come in on a motion to revise the order that is being entered orally today. I do not want to make any changes that would cause the election to be postponed even in one or two wards.

MR. LEVINSON: With that consideration in mind, I am not aware if Mr. Harte has provided copies of the legal descriptions which we recently received to opposing counsel.

MR. WHITT: We supplied you with about half of the wards.

MR. LEVINSON: Has opposing counsel received those?

If we are to work over the holiday weekend, we would like to work with those legal descriptions. I would like, perhaps, a Court order or something to protect us to start working on these lines based on the legal descriptions that had been provided as opposed to waiting for Monday, based on the wards that are not in controversy.

MR. HARTE: Yes, your Honor. They will be done in definitive form on Monday. They are done, as far as I am [4207] concerned, in definitive form for the south part of the City. We will deliver them to counsel in a half an hour.

THE COURT: I have already entered an order with respect to the 42nd and 43rd Ward. You have those legal descriptions.

MR. LEVINSON: Yes, sir.

With regard to the south wards, if we could have some type of agreement so that we can proceed with changing our records and documents and beginning the very long process of recording or whatever.

THE COURT: I will enter a written order on Monday at 10:00 o'clock, if you wish to bring it in.

MR. HARTE: That is good.

THE COURT: As I said, if there are any changes that can be agreed upon by that time and not interfere with the date of the election, they could be put in the record at that time.

MR. LEVINSON: We will proceed based on what we have received so far up until Monday.

THE COURT: You are certainly justified in doing that because I have adopted the proposal that the City made.

MR. COLMAN: Your Honor, I had two very short matters and I think Mr. Newhouse had one thing he wanted to address your Honor on.

First of all, for purposes of any post-trial motions or the appellate date, when should we assume you are [4208] entering your final judgment? Would that be as of this coming Monday?

THE COURT: I was going to delay entering a Rule 58 judgment until the parties had an opportunity to make a motion for any additional findings that they think might be lacking. After all, my decision was oral. Even after I completed it I thought of some things I could very well have said and maybe should have made findings on. I am not disposed to consider motions to change or reconsider the findings I have made but I do not want a record that is deficient for any findings that should have been made. So, I was going to wait for 10 days after the order, which apparently will be signed on Monday, to give the parties an opportunity to ask me to make any additional findings or perhaps modify, not substantively, but in such a way that the record would be in better shape.

MR. HARTE: That is acceptable to the Council, your Honor. There will be no waiver of appellate rights, as far as I am concerned, any time running as of last Tuesday, if that is what you are concerned with.

MR. COLMAN: Well, the concern was twofold, one in terms of possible expedited appeals and two, in terms of the 10 days, which is jurisdictional on post-trial motions.

THE COURT: The 10 days would start to run on Monday if an order is presented with the various legal descriptions [4209] in it. I would not actually enter a Rule 58 judgment until 10 days have run. So, that will give the parties an opportunity to call my attention to any additional findings that might be necessary.

MR. COLMAN: That is fine, your Honor.

THE COURT: Let's see. Ten days from Monday would be January 7th, Friday, January 7th.

MR. COLMAN: The second thing I wanted to raise—I think you have resolved this but I just wanted to make it clear for the record. I take it that our request, the request that I made this morning for an evidentiary hearing with regard to the proposed relief that the City Council has given to the Court, is denied?

THE COURT: I can't see any purpose in having such a hearing. It certainly would delay a Rule 58 judgment. If you find you want to file a motion, state the reasons why you think such a hearing would be desirable, it could be considered as a post-hearing or a post-trial motion or a Rule 60 motion for that matter.

MR. COLMAN: Very well.

THE COURT: At the moment I do not see anything to be gained by it.

MR. COLMAN: It is our position that what has been presented is of a nonevidentiary nature; that it has not been moved or accepted into evidence. No witnesses testified to [4210] it. We believe that it was drawn with improper considerations, as I indicated this morning. I do not care to rehash it all. I understand, your Honor.

THE COURT: I am relying upon the exhibits that were delivered this morning. I presume you are moving them into evidence to the extent they are relevant.

MR. HARTE: Yes, your Honor.

The Board of Elections, as Mr. Harte stated to the Court, has been working on the South Side. They can wait until Monday, I believe, to begin working on the North Side in terms of metes and bounds and legal descriptions that they need to go ahead with the elections in February on time.

In order to avoid any further delay, your Honor, we would ask that our configurations for the 26th Ward and [4196] 31st Ward be ordered to be imposed and that the surrounding wards, the 33rd, 35th or 32nd, whichever needs to be changed, be changed accordingly but that our configuration be used for those wards.

THE COURT: How many wards does you map change in that area? You mentioned three this morning, 26th, 31st and 32nd.

MS. MARTINEZ: For purposes of the record, your Honor, I am going to call this Plaintiffs' Exhibit 400 so that we can identify what the plaintiffs proposed this morning in court. All the red areas were wards which changed. However, some of those changes were required as a result of changes to the black wards. In order to change just the 26th and the 31st Wards I'm not sure how many wards would have to be changed but, obviously, the 32nd Ward—and I don't have the City map to compare them—but I believe the 33rd Ward would also have to be changed. There may be others.

THE COURT: None of those changes would result in a change in the demographics of the other wards, though, would they?

MS. MARTINEZ: They would result in a lowering of the Hispanic concentration in the 33rd Ward and possibly the 32nd Ward.

THE COURT: The voting age majority would certainly not change if the 26th and the 31st were configured the way you suggest?

[4197] MS. MARTINEZ: The voting age majority in the other wards?

THE COURT: The surrounding wards.

MS. MARTINEZ: No.

THE COURT: It would have to be somewhat changed but it would not change their basic demographic character?

MS. MARTINEZ: No.

MR. COLMAN: And I don't think, your Honor, there would be any impact on the black area that we have been concerned with.

We have no objection to Ms. Martinez' suggestion.

MR. HARTE: Well, if I can respond.

MR. BERMAN: Your Honor, just very briefly.

I think nothing can be clearer to evidence the City Council's intent than the map that they present to the Court at this time.

The Court specifically said 55 percent voting age majorities. It is questionable whether any of the wards they have presented to this Court will reach a 50 percent level much less a 55 percent level. I would suggest that the Court adopt the configuration as presented in Plaintiffs' Exhibit 400.

THE COURT: Anything else? You said you wanted to say something, Mr. Harte?

MR. HARTE: Your Honor, first, the direction given to [4198] me was to work with the 26th Ward and retain the basic configuration of the 31st Ward as it is constituted here. If you look at 400, your Honor, there is a dramatic change in the 31st Ward. Now, when that occurs, your Honor, it impacts upon the 30th Ward. When that occurs it certainly impacts upon the 37th Ward, as you can see here (indicating). So, when they say that adopting their map does not involve the black community, they are wrong, patently wrong. You can see it.

Now, the 26th Ward, as I said, if you are not to impact upon the 31st Ward where there is an elected state representative in the area and there is an endorsed Hispanic candidate for this aldermanic seat, when you at-

THE COURT: I have the figures here and I have been using those figures in trying to make the decision which I have made.

MR. COLMAN: We certainly object to their admission into evidence on the grounds that they have not been testified to by any competent witness.

MR. HARTE: Your Honor, the Court has directed that certain corrective relief be employed before the election and we have done that.

We are all proceeding, your Honor, on the same population base. The figures that I have put forward are certainly within the—the plaintiffs to determine as to their authenticity.

As to the procedure that I employed in following the direction of the Court, fine, that would, I suppose, require my taking the stand and withdrawing as counsel for the Council, if that is what is in mind. But I do not see any purpose in an evidentiary hearing. I am perfectly willing [4211] to do whatever the Court deems proper and appropriate under the circumstances. All I did was follow the directions of the Court in order to bring this case to an end before the election.

If they want to place me on the stand to give testimony about my dislike or like of Alderman Davis or like or dislike of Alderman Marzullo—I mean, I would be happy to testify as to my thoughts about some of my clients. It might take a little time of your Honor but I would be delighted.

MR. COLMAN: It is not Mr. Harte's testimony that we would desire. It is the testimony of the aldermen and committeemen who drew these lines.

MR. HARTE: Well, you know, these conclusions are made, your Honor by Mr. Colman. He wasn't there.

MR. COLMAN: That is correct; I wasn't.

MR. HARTE: I have to state that I was there. I wasn't there when they drew their lines which, in my judgment, maximizes the interest of their client, nor do I think I had any place there. So, there we are.

THE COURT: We have a pracitcal problem of how to get the map in a position where the election can go forward and still satisfy the constitutional and statutory requirements. I think the way to do it is the way we have done it.

Now, these documents that I have are computer [4212] print-outs from tapes that have been verified, as I understand it, by the parties long ago. They are simply a redoing of the same figures on a different map and a different line. It seems to me, if nothing else, they are probably official records of the City of Chicago because I asked the City, namely, the defendants, to come up with a solution to the problem.

If you find that there is something misleading or something incorrect about these figures, which are computer print-outs, I certainly would be willing to reconsider my decision.

MR. COLMAN: Your Honor, our complaint is with the manner in which the lines were drawn, not with the numbers reflected on the print-outs at this point, at least.

It is our position that the map that your Honor is approving today is a map that is going to govern the voting rights of blacks, Hispanics, whites and everyone else for the next 10 years. While we have all been operating under certain time constraints, that is not a ground for abdicating the proper procedures and for not proceeding with the evidence in the way that it should be proceeded with for a map that is going to be in place for 10 years.

MR. HARTE: Your Honor, Mr. Colman can stand and posture his appellate court record to the extent he desires. I don't think it adds anything to this procedure. The fact is that [4213] the Court directed me to do certain things and I did it. I reported to the Court. If they want to inquire as to how I did it, I don't think it matters one iota.

THE COURT: Subject to any miscalculations or errors in the figures that you find I think the procedure is practical and a valid one. I am certainly not going to get in-

volved in the political considerations as to where incumbent aldermen live or which incumbent aldermen are going to be able to get reelected. Those are political problems. I do not believe it is proper for me to get involved in them or take them into consideration.

I made the finding I did about incumbency because that was a question that went to the purpose or the intent of the City Council when it adopted the November 30 configuration. I think it is a proper consideration even for redistricting but certainly not controlling.

So, who is going to be elected is going to depend upon the efforts of the various persons who are going to run and those who are going to organize the political machinery to conduct their election.

So, we will recess—

MR. RUFFOLO: Your Honor, if I may. I have a motion pending. My name is Ruffolo. I have a motion pending. In fact, I have two. One is to file an appearance amicus on behalf of Frank Brady. I would move to have that motion [4214] withdrawn at this time.

THE COURT: I will grant your motion.

MR. RUFFOLO: Thank you, your Honor.

I additionally have another motion to file an appearance as additional counsel for Frank Brady in the 15th Ward. We would ask the Court to move on that at this time.

The purpose of bringing that motion at this time is to preserve our posture to receive any post-trial or post-judgment motions and preserve our position in the event of an appeal. That is all.

THE COURT: Do you have any objection to that, Mr. Harte?

MR. HARTE: I have no objection. I am happy to have him with me, your Honor. He is a nice fellow.

THE COURT: Your appearance is allowed.

MR. RUFFOLO: Thank you, Judge.

THE COURT: Alderman, do you wish to say something?

MR. NEWHOUSE: Thank you, your Honor.

Your Honor, for the record, defense counsel has described the issue in this case as a power struggle between Regular Democrats and Independents. As counsel for the Ketchum plaintiffs and on their behalf I want to take strong exception of that analysis to this case. It could have the effect of viewing this case with less seriousness than it deserves.

[4215] The case before this Court involves the unfair treatment of black citizens of the City of Chicago by a political structure dominated by whites. It is a black versus white issue. It is a black versus white problem in which the black community is rendered politically impotent with all the social ills that result from political impotence, unemployment, poor housing, inadequate health care, high crime rates, poor schools, an increase in tax consumers and a decrease in benevolent taxpayers.

It would be difficult to overemphasize the continuing damage to the black community resulting from this political imbalance. That damage is at the heart of this case. That damage severely affects the city at large. It is the reason we came before this Court asking for relief. We are concerned that any view of this case as a Regular Organization versus Independent tends to cloud the issue and detract from the serious nature of this very important issue.

There is no frivolity in this case. We are concerned that the view expressed by defense counsel may carry that connotation, whatever the intent. We are concerned that it not vitiate any relief this Court chooses to give.

We therefore wish the record to reflect our request that this case be viewed in the context of the plaintiffs' intention to ameliorate the political discrimination [4216] resulting from the present remap. It is for this reason that we are before this Court. We simply want to emphasize that fact for the record.

Thank you, your Honor.

MR. HARTE: Your Honor, I am sure Senator Newhouse would amend his remarks to state that it is a black and Hispanic case and not only black.

MS. MARTINEZ: Virginia Martinez on behalf of the Velasco plaintiffs.

Your Honor, we were notified last week that neither Mr. Colman nor Mr. Miner would he here. We are also today representing the PACI and Ketchum plaintiffs.

MR. LEVINSON: Michael Levinson on behalf of the Chicago Board of Election Commissioners.

MR. HARTE: Bob Berman indicated to me, your Honor, I think on Thursday that the probability was that he would not be here either.

THE COURT: I do not see him.

MR. HARTE: Your Honor, we have in front of you what has been marked as Defendants' Exhibit 261. We received materials with respect to voting age population and discovered that Ward 26 had not achieved the 50 percent that you directed. Consequently, we had to make some changes in order to get sufficient Hispanic precincts from 31 and 33 in order to bring 26 voting age population up to 50. That has been achieved. In doing so, as Ms. Martinez noted, 33 went from a 50.41 total population Hispanic to 48.8.

[4220] I have these exhibits for you, your Honor. I have exhibits 261-A and 261-B, which I can hand to you.

(Exhibits tendered to the Court.)

MR. HARTE: 261-A are the metes and bounds, your Honor, which are the actual determinants of the wards themselves by streets and locations. In essence, they change the ordinance itself which the Council passed for the November map. Those wards which are not changed within the ordinance are not included in 261. Those wards which are changed, which include Wards 1, 12, 14, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, 41, 42, 43 and 45, are included in those metes and bounds.

The reason why many of these wards were changed was to make minimal population changes in order to accommodate the major changes made in the 15th, 22nd, 25th, 37th, 29, 28, 27, 25, 33, and 32, those wards.

THE COURT: 22?

MR. HARTE: Yes, your Honor, 22.

When you do that there are minimal changes that are made in some of these other wards (indicating).

So, that essentially is what we have been able to give to the Court.

THE COURT: You also have Exhibit 261-B.

MR. HARTE: Yes, your Honor. 261-B are the demographics of these wards, the changed wards, together with the [4221] demographics of the wards that have not been changed.

So, 261-B through -I—actually through -J are the demographics.

261-I is the exhibit that the Court was particularly concerned about because it includes the breakout of voting age population for all of the wards.

MS. MARTINEZ: Your Honor, on behalf of the Velasco plaintiffs, I would like to make a few statements primarily with regard to the changes in the 26th and 33rd Wards. Your Honor, what has been presented this morning we believe is a substantial reduction in opportunities for Hispanics than what was presented Thursday morning. It represents, your Honor, a reduction from five to four in terms of majority Hispanic wards based on total population and represents a reduction from four to three in terms of voting age population because the 26th Ward is 50.0 percent, which is not a majority of the voting age population.

Therefore, your Honor, as I stated Thursday, it is again an attempt to minimize any effect that this case would have in terms of the voting rights of Hispanics on the Northwest Side. We think, your Honor, it is a substantial change from what was represented to the Court Thursday morning.

The 33rd Ward, which was 50.4 percent Thursday morning is now 48.9 percent Hispanic total population. The

MR. NEWHOUSE: I see no need to amend my remarks. I represent the black plaintiffs in this case.

MR. HARTE: I thought you were speaking for everyone.

THE COURT: I called you "alderman". I have not known you before the time you came into court but I now understand you are a Senator.

Well, thank you, gentlemen and ladies. I think everyone has tried this case very assidously, very diligently and done everything they can to move it along. I think counsel have been respectful. We had a few times when things got a little bit heated but by and large everyone has acted as competent and well-qualified attorneys.

I just happen to come across the only statement I know of by the Supreme Court on Section 2 of the Voting Rights Act. It is in the decision of City of Port Arthur vs. United States. It appears in Footnote 4 because it is not a Section 2 case. But just by reading it—and, of course, it is dangerous to rely upon footnotes—it [4217] does seem to me that it pretty much supports the position and the interpretation of Section 2 that I have adopted in this case.

So, we will recess until 10:00 o'clock on Monday morning, December 27th. I wish you all a pleasant holiday.

MR. BERMAN: Thank you, your Honor.

MR. LEVINSON: Merry Christmas.

MR. HARTE: Thank you, your Honor.

(Whereupon an adjournment was taken until 10:00 o'clock a.m. on Monday, December 27, 1982.)

[4218]* IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	)	
vs.	)	No. 82 C 4085
CITY COUNCIL OF THE CITY OF CHICAGO, et al., *Defendants.*	)	

Before the HONORABLE THOMAS R. MCMILLEN, on Monday, December 27, 1982, at the hour of 10:00 o'clock a.m.

The trial resumed pursuant to adjournment.

APPEARANCES:

MS. VIRGINIA MARTINEZ
MR. ROBERT J. ZAIDEMAN

MR. WILLIAM J. HARTE
MR. JEFFREY B. WHITT

MR. MICHAEL LEVINSON

[4219] THE CLERK: 82 C 4085, Consolidated, Ketchum vs. City Council.

MR. HARTE: Good morning, your Honor. William Harte together with Jeff Whitt for the City Council.

* Numbers in brackets refer to the pagination of the Official Court Reporter's transcript of proceedings.

[4222] 26th Ward, which we were told would be a majority voting age ward, is 50.0 percent, which is not a majority. That reduces it to three majority Hispanic wards based on voting age population.

THE COURT: What is the right-hand column that says "55.9 in the 26th Ward"? That says, "Percent voting age population, total Hispanic—"

MS. MARTINEZ: That is the voting age percentage of total Hispanics, not of total population. That is voting age of Hispanics within that ward, not of the total population.

THE COURT: You mean there are only 56 percent voting age Hispanics?

MS. MARTINEZ: No.

MR. HARTE: Where?

THE COURT: 55.9?

MS. MARTINEZ: 55.9 is the percentage that voting age Hispanics are of the Hispanics within that ward.

MR. HARTE: Right, your Honor. That is a figure that relates voting age population Hispanics to total Hispanics. The figure that Ms. Martinez is concerned with and we are concerned with is the 50.0. We do not bring that out, your Honor, to the other decimal. If you take the population, you see that it is 50.026. It is a majority voting age population ward, your Honor.

[4223] THE COURT: Just to get back to the far right-hand corner, that really does not have any significance in what we are trying to do, does it?

MR. HARTE: Well, it does have some significance because it is indicative of the difficulty you achieve in trying to obtain the voting age population majority, but it is not material for our consideration here.

THE COURT: I suppose it has some significance in showing that in the course of years the percentage on the right-hand column will decrease and the percentage in the next right-hand column will increase just by virtue of minor residents becoming voting age residents.

MR. HARTE: But we are not placing any significance at all on that, your Honor.

You see the 58.8 figure, the percent of total population in 26, is the percent total population within the 26th Ward.

THE COURT: Yes.

MR. HARTE: In order to obtain that statistic you had to take some of the Hispanic precincts in 33. It is true that 33 was lowered approximately 1, I think, point 6 percent total population in order to achieve that result. As I have stated, in order to obtain a voting age population increase you must get precincts which have substantial Hispanic population in them, precincts which are not—not only [4224] precincts but tracts—which do not have a substantial number of whites in them.

If you have, for instance, a 55 percent Hispanic tract or subtract or block, you really can't do much about raising the voting age population level within the ward. You must seek the larger Hispanic precincts, blocks and tracts, which we sought to do and had to invade, as Ms. Martinez pointed out, 33.

Also, in order to preserve 31 we had to bring 33 in this configuration west, if you see, your Honor, because of the question of seeking the substantial Hispanic blocks and precincts (indicating). In a sense you see an unusual configuration in 33 but it was done in order to preserve 33 as high as we could of Hispanics and to move 35 in a northern direction where you have more Anglos, preserve 31, 32 and 33 as well.

So, we have essentially four total population Hispanic wards. 33 is 48.8, which is 1.2 below total population majority, and 32 is a substantial Hispanic plurality total population and there is also a voting age population plurality in Ward 32. In order to preserve that configuration, you see 32 coming all the way down Kinzie here and picking up this area (indicating).

MS. MARTINEZ: Your Honor, the 31st Ward was also reduced between Thursday and today. I didn't mention

[4225] it earlier. It still remains a majority but the slightest voting age but it was also reduced between Thursday and this morning.

Your Honor, with regard to the efforts to preserve and what population has to be taken out in order to create Hispanic majorities, we have already shown the Court twice that when we do that we come up with 55 percent Hispanic voting age majorities, wards which are 60 percent total Hispanic population and not the barest majority which can possibly be created, which is what this map does (indicating).

THE COURT: Where would you strengthen any of these without reducing the strength of one or more other Hispanic wards?

MS. MARTINEZ: Your Honor, we recognize it's not possible to have three majority Hispanic wards up there but we created two majority Hispanic wards based on total population as well as voting age population. What has been done here is to reduce that to create the barest majority in one of them and 50 percent which is not a majority unless you carry it out three places.

THE COURT: Which two are you talking about?

MS. MARTINEZ: Your Honor, we don't have our maps in court this morning. But on the alternative which we presented Thursday morning we had two wards, both of which were [4226] majority Hispanics based on both total population and voting age population. The voting age population was over 50 percent not just 50 percent.

THE COURT: Which two, though, do you remember?

MS. MARTINEZ: They were, I believe, the 26th Ward and the 31st Ward.

MR. HARTE: Your Honor, if you would recall, their configuration of the two Hispanic wards, when placed in context with 30 and 37 would have diluted the black ward in 37. That is the difficulty that we have had in seeking to make this balance so that you would not, by making a radical change in 31, dilute the majority black ward in 37.

I do not have the map here but it is my recollection that 30 was somewhere in here and 31 was somewhere around here and 26 was somewhere around here (indicating).

MS. MARTINEZ: Your Honor, Mr. Colman represented to the Court on Thursday that he had no objection to our configuration for the northwest area because he recognized that the 37th Ward could be redrawn not to reduce the black majority. I do not think that has even been tried by the defendant.

THE COURT: The 37th has 79.3—or 61.7 percent black and a 56.2 percent voting age population.

MR. HARTE: Yes.

THE COURT: So, there is not a whole lot that could be [4227] done with the 37th. I think the problem was that if you started moving people out of the 37th you are going to affect two or three other wards, such as the 29th or the 28th.

Getting back to the 31st, I was just wondering what the split is between the other groups. You have 8.9 black and—was it 36.9 white?

MR. HARTE: Yes, your Honor.

THE COURT: —minorities in the 31st voting age population? It is hard to distinguish in these columns between voting age—

MR. HARTE: I am sorry, your Honor.

In the 31st, your Honor, it would be 50.6 Hispanic voting age population and 8.9 black voting age population.

THE COURT: And 36.9 white, right?

MR. HARTE: That is correct, your Honor.

The difference in a hundred percent includes Asians and other races, your Honor. So, it is a 36.9 in 31 white voting age population, 41.1 in 26.

The point I have attempted to stress here is that the opportunity to elect a candidate of their choice is not only

there and obtainable but it can't certainly be the result of organization, candicacy or the campaign. We have done it on total population. We have done it on voting age population. There really isn't, at least in my judgment, any further function of the Court other than to create the [4228] opportunity to elect a candidate of their choice.

THE COURT: That is what the statute says.

MS. MARTINEZ: That is exactly what we are asking, your Honor. Your Honor stated that four majority wards of voting age population. 50.0 is not a majority and 50.6 is the barest majority. There was an effort to create the barest compliance with the Court's order, the minimum that could be done in order to satisfy the Court, and even that I don't think satisfies this Court's order.

MR. HARTE: Your Honor, voting age majority—or the determination of voting age majority, which the Court determines, really has never been the criterion in other cases in other jurisdictions.

What this Court has done is gone beyond the total population redistricting concept with respect to fairness in minorities and centered on voting age population.

When you have a disparity in favor of the minority by at least 10 percent in voting age population, the opportunity is not only there, not only achievable but in my judgment probable if there is the participation of the minority and the organization of the minority population in the area.

Now, as I have stated so many times, the Court can do only so much with respect to delivering fairness to minorities. The Court cannot undertake organizational meetings for [4229] the minority candidate or obtain funding or participate in the area. You provide the opportunity. That is essentially what the Voters Act Amendment spoke to. It is not a question of proportional representation or maximization; it is the opportunity, and you have done that. You have done that far beyond what we believe, your Honor, would even have been appropriate but that has been accommodated.

THE COURT: Well, it is close, I have to agree, but it does satisfy the majority age population and certainly the majority of the gross population in the area. I am still influenced by the fact that three years will have gone by by the time the election is held. So that there will be a change. There will be not only a movement, probably, into the ward of Hispanics but also a change in their age distribution. They do have a very good likelihood of electing—not only voting for but electing a candidate of their choice in the 26th because the opposition or the other two minorities are not split but they are pretty much below what the Hispanics are. Apparently that is, you say, made up by the Asiatics or others, not the three groups that are involved here.

MR. HARTE: Asians, Aleuts and others.

THE COURT: The split in the 31st is even greater. It gives the Hispanics a 50 to 37 percent advantage over the whites and a 50 to 9 percent over the blacks. So, the opportunity [4230] there is quite good as far as the 31st is concerned. It is a little closer in the 26th because the whites have 41 percent as compared to 50 percent of the Hispanics. But still that is a substantial advantage age-wise and a greater advantage on the gross population figure.

I get back to the original proposition that this is the responsibility basically of the City Council. Mr. Harte is proposing this on the basis of the City Council's participation in this lawsuit. Although it may not be the best map or the most perfect map or even the most equitable map that could be drawn by other groups it is a practical solution to the problem and one that I think I am bound to adopt because I have gone beyond what the words of the statute or even what the Supreme Court have laid down in redistricting cases.

Of course, in the 22nd and the 25th your voting age majorities are quite good, quite high. So that on principles of equity, certainly not any problem of regression, you have an excellent opportunity there of getting two aldermen when you do not have any that have been elected so far in the Hispanic community.

Is there a problem of regression in one of these Northwest Side wards? I was just wondering whether the new configuration that the City is asking for here causes any problem in that respect.

[4231] MR. HARTE: I don't believe so, your Honor. In the 1970 lines with 1980 population there was a voting age population of 50 percent. I could be wrong.

THE COURT: But you raised the percentage in the 32nd substantially.

MR. HARTE: Yes, your Honor.

THE COURT: You have raised it in the 33rd. Although, it has been reduced in the 31st on voting age population. It has been reduced from 52.41 to 50.6.

MS. MARTINEZ: That is exactly my point, your Honor. The population is raised where it won't make a difference and it is reduced where it will.

THE COURT: As I said before, you have a very substantial majority when you are looking at the other two minority groups in that, the whites and the blacks, because you have only 36.9 percent of voting age population on the whites' side. So, that is a 50 to 40 percent ratio on voting age population. Again, this is primarily, as I recall, a Puerto Rican area, is it not?

MS. MARTINEZ: Which ward, your Honor?

THE COURT: 31st.

MS. MARTINEZ: Yes.

THE COURT: So that you have a high percentage of citizens which you do not have in the 22nd or the 25th.

MS. MARTINEZ: With regard to the 26th Ward, which is [4232] the one that I am complaining about, your Honor, it is only 50.0 percent. In the 26th Ward the Spanish population is almost evenly divided among Puerto Ricans and Mexicans. There is, therefore, the problem of having non-citizen residents in the 26th Ward, primarily Mexicans, who are not eligible to vote or who are in the same category as 16 and 17-year-olds in terms of creating an

opportunity for Hispanics to elect in that area. That is exactly why that 50 percent is inadequate.

THE COURT: It may not guarantee them a Mexican representative but that isn't the purpose of the Voting Rights Act. You have only 46.19 percent voting age population—47.68 percent in the 26th Ward and you now have 50.026 percent, which certainly is not regressive. That was one of the wards I indicated should be changed and it has been.

MR. HARTE: Your Honor spoke to the 1970 lines. I have that exhibit with me, specifically with respect to the issue of retrogression.

In Ward 22—

THE COURT: What exhibit are we talking about, now?

MR. HARTE: 1-I, your Honor. It is the first exhibit.

THE COURT: Your -I?

MR. HARTE: It is the exhibit, if you recall, of the 1970 map with the 1980 statistics that the plaintiffs requested that you look to with respect to retrogression.

[4233] In this proposal, in 22 the voting age population is raised from 56.7 percent to 69.7, an increase in this map of approximately 12 percent Hispanic. In Ward 25, under the 1970 lines with the 1980 population, it was 44.9. In this proposal it is 59.5, which is an increase, your Honor, of almost 15 percent Hispanic. In Ward 26, under the 1970 lines, it was 41.9 percent voting age population. It is increased to 50.02, I believe. That is an increase of about 8 percent, your Honor. In Ward 31, in the '70 lines, with the '80 population, it is 48.4 percent. Under this proposal it is 50.6 percent, an increase of 2 percent, your Honor, 2.2 percent.

Now, in Ward 32 in the '70 lines it was 40.2. It is 38.8 voting age population, which is a very slight decrease of 1.4 percent, your Honor.

THE COURT: What was the black voting age population in 32?

MR. HARTE: In 32 it was 3.9 percent, your Honor.

THE COURT: And the whites?

MR. HARTE: The white was 53.6.

THE COURT: Well, that is only 50.8 now. In the 32nd?

MR. HARTE: In the 32nd, your Honor. Yes, there has been a change.

THE COURT: I do not understand.

According to this Exhibit 261-I the voting age [4234] population now would be 38.8 percent.

MR. HARTE: Yes, your Honor.

THE COURT: And it was what under the 19—

MR. HARTE: '70 line it was 42.8.

THE COURT: It went down 4 percent there. Where is that difference—

MR. HARTE: Excuse me. I have got the wrong one. It was 40.2. It went down 1.4 percent. That was made up, your Honor, by a decrease in voting age population of whites from 53.6 to 50.8. When you raise the Hispanic you necessarily, generally, decrease the white.

THE COURT: You did not raise the Hispanic, I think, in the 32nd, did you? The Hispanic voting age population went down, did it not?

MR. HARTE: Yes, your Honor, 1.4 percent.

THE COURT: So, the white must have gone—

MR. HARTE: The black percentage increased by about 3 percent because you had more black population moving in that area.

THE COURT: So, actually in the 32nd the Hispanics, compared to the majority, has a better advantage now than they had in the other figures—

MR. HARTE: I believe so, your Honor, yes.

THE COURT: —even though their voting age population did go down 1.4 percent.

[4235] MR. HARTE: That is correct.

THE COURT: Because the black minority, which is very small, 8.3 percent now, did go up on the new figures.

MR. HARTE: The same is referable to 32 where under the 1970 lines it was 42.8 and under this proposal it is 42.0. So, it is a .8 difference but also the white was changed. From 55.3 it was lowered to 53.4, which is almost a 2 percent lowering of the white.

The point we make is that there has been—not has there not been any retrogression but there has been a substantial increase in Hispanic voting power. There certainly has been no dilution.

THE COURT: I think that last example you were giving was the 33rd but I thought you said the 32nd.

The 33rd is now 53.4 white, down from 55-something.

MR. HARTE: Yes.

THE COURT: So, I think on the totality of the circumstances the Hispanics have achieved considerable increased voting power and they do have their four majority voting age wards. The two close ones are ones in which they have a higher than average citizenship ratio than they do in the two down along the Stevenson Expressway, the 27th and the 25th. I think that is a reasonably fair solution to the problem. Again, as I say, it is not maybe perfect and it doesn't give the Hispanics everything they would [4236] like to have but I will sign the order in that respect over the objections of the Velasco plaintiffs.

MR. HARTE: I have—

Excuse me, Mr. Levinson.

MR. LEVINSON: Yes. Thank you.

I have just a housekeeping matter, so to speak.

We will, your Honor, based on our discussions at our last court appearance, be drawing our maps transferring our files, doing all the things necessary to prepare for the election based upon the metes and bounds description which has been presented by Mr. Harte. Oftentimes

there is a "north" in there or a "south" or an "east" or a "west" or a typographical error. In the interest of economy we would just like to set up a structure where we could make those corrections at the least inconvenience to the parties involved and to the Court so as not to delay the upcoming election.

MR. HARTE: Yes. We went over these three times until 2:00 a.m. this morning, your Honor. I am absolutely certain there is going to be a mistake because there always is one. It is like galley reading, Judge. No matter how often you read it—I would state that in the state legislative case this occurred, I think, twice or three times.

THE COURT: Just so you do not change the population percentages or voting age percentages when you change the [4237] metes and bounds. In other words, if it is just a typographical error then there should not be any problem.

MR. LEVINSON: I have written it in that the Board be permitted to correct any typographical errors, something giving the Board authority—since apparently defendants' 261-A will be the document from which everything flows, that the Board at least have the jurisdiction to correct any typographical mistakes or errors in the metes and bounds description.

MR. HARTE: May I suggest this procedure since the Court retains jurisdiction of this case and this plan: That all that need be done is, if there is a requested typographical change, the Board contact me and we can come in on a motion and request authority to make the change, your Honor, by order. It was done in the state legislative plan. It could be done very easily here with notice to all the parties.

THE COURT: You do not have any order at this point.

MR. HARTE: Yes, sir, I have an order here.

THE COURT: I think that could be included in the order.

When I told the parties on Thursday was when I signed the order they would have 10 days to not only object but to call attention to any findings that might have been omitted that they would like to have included in the oral decision I made so that at the end of the 10-day period the [4238] Rule 58 judgment can be entered. Everyone seemed to think that was desirable.

So, I would say, if you present the order, it could simply give the Board of Election Commissioners the right to make typographical or non-substantive amendments without Court order—

MR. HARTE: All right, your Honor. I will draft that order.

THE COURT: —but with notice to the parties so that if anyone finds that the percentages do change, then they could ask for a revision of the order.

MR. LEVINSON: Thank you, your Honor.

MR. HARTE: Your Honor, I have presented Exhibit 261. Should I leave this plan with the Court, the exhibit together with Exhibit 261-A and 261-B?

THE COURT: All right. For the next 10 days that would probably be just as well.

Do you have an order there or are you going to amend it?

MR. HARTE: I have an order but I did not include this suggested change. I can bring it back to you in an hour.

THE COURT: All right.

MR. HARTE: Thank you, Judge.

(Which were all the proceedings had and testimony taken on the days and dates aforesaid in the above-entitled cause.)

[4239] IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	
vs.	No. 82 C 4085
CITY COUNCIL OF THE CITY OF CHICAGO, et al., *Defendants.*	

CERTIFICATE

I, James W. Cheek, do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings had in the above-entitled cause before the HONORABLE THOMAS R. MCMILLEN on October 19, 20, 21, 22, 26, 27, 28, 29 and November 2, 3, 4, 5, 16, 17, 18, 19, 23, 24, 25, 26 and December 3, 16, 21, 23, 27, 1982.

/s/ JAMES W. CHEEK
Official Court Reporter
United States District Court
Northern District of Illinois

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARS KETCHUM, et al., *Plaintiffs,*	No. 82 C 4085
and	
CHARMAINE VELASCO, et al., *Plaintiffs,*	No. 82 C 4431
and	
POLITICAL ACTION CONFERENCE OF ILLINOIS, et al., *Plaintiffs,*	No. 82 C 4820
v.	
JANE M. BYRNE, et al., *Defendants.*	

DECISION

Plaintiffs in three of the above consolidated cases have filed a Motion For Modification Of Judgment, supported by two affidavits filed February 28, 1983. The motion is not joined in by the Pillman intervenors nor by the Intervenor, United States of America. It is opposed by the sole defendant City Council of the City of Chicago by a memorandum and certain documents filed March 14, 1983.

The plaintiffs represent two groups of Black voters and one group of Hispanic voters and request that the defendant be required to show at an evidentiary hearing (memorandum filed January 24, 1983, p. 2):

(A) The process by which the defendant's "relief map" was prepared;

(B) Whether wards comprised of voting age majorities allows those voters a fair opportunity to participate in the political process and to elect representatives of their choice; and

(C) Whether the defendant's relief map provides for equal treatment of minority and white voters in terms of the packing and fracturing of voters.

Defendant not only objects to being required to shoulder the burden of proving these elements but also objects to any additional hearings in the trial of this case. Plaintiffs have not submitted an alternative relief map which attempts to comply with our decision but propose their previous maps which have been rejected by the court. Therefore, the only question which would be heard on plaintiffs' present motion is whether or not defendant's map does in fact comply with our decision.

The title of plaintiffs' motion was not self-explanatory, hence the court needed some specification of plaintiffs' current objectives. The two affidavits filed February 28, 1983 satisfy us that plaintiffs are not at this time seeking a reconsideration of the merits of our decision of December 21, 1982 but are seeking a rehearing on defendant's compliance with that decision. Defendant's compliance, evidenced by the map which was finally adopted by the court (Defendant Ex. 261 as amended), was accomplished by defendant proposing various configurations, hearings on plaintiffs' objections in open court beginning December 23, 1982, and ultimately the adoption of a map which the court found complied substantially with the decision of December 21, 1982. No testimony was presented by defendant, but the plaintiffs did not contest the accuracy of the census figures upon which the defendant's map was based.

The defendant's map was verified by representations of the defendant's counsel and the census statistics supplied

with the map (Tr. 4127-4217). This procedure was adopted in part for the purpose of obtaining a map in time to be available for the approaching primary election in the City of Chicago, and the compliance procedure itself was not objected to by plaintiffs so far as we can recall. Nor are they objecting to the statistics of demographics of the map at this time, nor to the map's technical compliance with the decision which we entered on December 21, 1982. We found that the relief map contains the number of Black majority and Hispanic majority wards required by our oral decision.

As to point (A), above, plaintiffs seek to inquire into the political input which resulted in the present map. This inquiry, in our opinion, is irrelevant. Whether defendant's attorney conferred with one or more of his clients who were members of the City Council or whether his clients had certain motivations for requesting certain altered configurations of the wards is not a concern of this court, if the map satisfies § 2 of the Voting Rights Act as amended. Section 2 as amended is concerned with the "result," as distinguished from the subjective motivation of the map's preparers. Defendant's objective was to satisfy the requirements of that section and of the court's oral decision by whatever practical configurations were available, since we had found against plaintiffs on the constitutional issues. Furthermore, the present map was drawn pursuant to court order and is not subject to the open-meeting or free-speech requirements under which the original map of the City Council was drawn. Finally, if the defendant's attorney does in fact represent individual members of the City Council as well as the entity itself, his communications with his clients would probably be privileged. Therefore, we can see no reason to reopen the hearings for the type of investigation requested by paragraph (A).

Point (B), as now appears clear from the plaintiffs' affidavit signed by Alderman Danny K. Davis, is nothing more than an attempt to supplement the record on the plaintiffs' contention that minorities, whether Black or

Hispanic, must have a 65% majority of population in order to "elect" representatives of their choice. Plaintiffs had ample opportunity to support this contention by evidence at the time of trial and failed to do so. The 65% majority benchmark figure which has apparently been adopted by the United States Department of Justice for certain purposes in certain areas of the country was not shown by evidence in the case at bar to have sufficient validity or applicability to the voting patterns in Chicago for adoption by the court. Furthermore, the use of voting age statistics, as distinguished from gross population figures, in our opinion eliminates any violation of § 2 insofar as is feasible with the available statistics.* The other two prongs of the 65% criterion, based as they are on the motivations of individual citizens, are not a relevant element under § 2 as amended, but in any event were not supported by the evidence.

Plaintiffs' Point (C) seeks to attack the City's relief map on the grounds of "packing and fracturing of voters." Although the time schedule for adopting the defendant's new map was admittedly tight, plaintiffs were not precluded from raising these questions at the time when the map was being considered in open court and during the period when it was still being revised to meet the requirements of the one-man, one-vote constitutional requirement and of § 2. To say the least, this particular objection is not timely now.

More significantly, however, it attempts to raise objections to the defendant's map which have already been found to be of little weight by the court insofar as compliance with § 2 is concerned. The testimony of plaintiffs' expert Professor Philip M. Hauser as evidenced by the affidavit of Whitman Soule is now being offered in opposition to the map adopted by the court, and his affidavit

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* The lack of citizenship among Hispanics results in an unknown dilution of their voting strength, but this group has offered no evidence by which this can be obviated.

is no more persuasive than was Professor Hauser's testimony. Some "packing" and "fracturing" of minority populations are inevitable in any map which conforms to the one-man, one-vote criterion when applied to groups of minority citizens whose numbers, proportions of the population, and location in the City of Chicago are not only expanding but also are moving at a relatively rapid pace.

Given these variables, the court found more persuasive the population and demographic statistics adduced by other expert witnesses, particularly those of the defendant. Under all the circumstances confronted by the parties in this case, no map which satisfies the constitutional and statutory requirements will be perfect or likely to satisfy the political ambitions of any particular group or individual. We see no purpose in re-examining the "packing" and "fracturing" issues on the basis of the William Soule affidavit.

The trial of these cases was expedited at the request of plaintiffs, primarily in order to meet the filing and election requirements of the Illinois election laws. In fact, the original trial schedule was adopted in order to afford the losing parties an opportunity for at least a preliminary review by the Court of Appeals. After our decision was rendered as expeditiously as could reasonably be expected, two elections have been conducted on the basis of the court's map. The individual aldermen who have now been selected have expended a great deal of effort and money to achieve the results which the court is now loathe to undo, particularly on the motion of only a few aldermen, if any.

Plaintiffs' affidavits may stand as an offer of proof and that proof is rejected for the reasons stated above. In the event that we have misunderstood plaintiffs' contentions or if they are otherwise complaining that the relief map was adopted without any evidentiary hearing, defendant has offered to adduce whatever evidence may be required by the court. The court is willing to take evidence on the

demographic and statistical compliance of the relief map with our decision of December 21, 1982 and to remedy any non-compliance supported by the evidence but the defendant's objections to the pending motion and affidavits filed by plaintiffs are sustained.

For the purpose of determining whether we have correctly understood plaintiffs' contentions, this case is set for a status report on Monday, May 23, 1983 at 11:15 a.m.

SO ORDERED.

/s/ Thomas R. McMillen
Judge, U. S. District Court

Dated: May 12, 1983

Amended Opinion by Judge Cudahy

JUDGMENT—ORAL ARGUMENT
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 14, 1984.

Before

Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. ROBERT J. KELLEHER, *Senior District Judge**

Nos. 83-2044, 83-2065, 83-2126

MARS KETCHUM, et al.,

Plaintiffs-Appellants,

vs.

JANE M. BYRNE, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
Nos. 82 C 4085, 82 C 4820, and 82 C 4431—
Thomas R. McMillen, *Judge.*

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* The Honorable Robert J. Kelleher, Senior District Judge for the Central District of California, sitting by designation.

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED IN PART, REVERSED IN PART, AND REMANDED, with costs on appeal awarded to plaintiffs-appellants, in accordance with the amended opinion of this Court filed this date.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 10, 1984

Before

Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. ROBERT J. KELLEHER, *Senior District Judge**

Nos. 83-2044, 83-2065 & 83-2126

MARS KETCHUM, *et al.*,

Plaintiffs-Appellants,

vs.

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Defendants-Appellees.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division.
Nos. 82 C 4085, 82 C 4820 and 82 C 4431—
Thomas R. McMillen, *Judge.*

ORDER

On June 7, 1984, the defendant, the City Council of the City of Chicago, filed a petition for rehearing, with sug-

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* The Honorable Robert J. Kelleher, Senior District Judge for the Central District of California, sitting by designation.

gestion for rehearing en banc, of an opinion issued in the above-captioned matter on May 17, 1984. The plaintiffs filed an answer to the defendant's petition for rehearing en banc on June 22, 1984. With the panel's approval, the defendant then filed a reply to plaintiffs' answer on July 5, 1984, and, finally, the plaintiffs filed a response to defendant's reply on July 18, 1984. On August 14, 1984, the panel vacated its opinion of May 17, 1984, and issued an amended opinion, which had previously been distributed to all the members of the court in regular active service. Both parties were then given an opportunity to file supplementary submissions concerning the amended opinion. The defendant did so on August 20, 1984, continuing to present arguments in support of a rehearing or rehearing en banc.

All of the judges on the original panel have voted to deny the petition for rehearing, and none of the members of the court in regular active service has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.

On June 8, 1984, the Corporation Counsel for the City of Chicago filed a motion to strike the petition for rehearing with suggestion for rehearing en banc. On June 15, 1984, Attorney William J. Harte filed a response to the motion to strike the petition for rehearing, and on June 25, 1984, the Corporation Counsel filed a reply in support of the motion to strike. The motion to strike the petition for rehearing is hereby DENIED on the ground that it is moot.

STATUTE INVOLVED

The statute involved in this petition is Section 2 of the Voting Rights Act of 1965, as amended on June 29, 1982, by Pub. L. No. 97-205, §3, 96 Stat. 134 (1982), 42 U.S.C. §1973 (1982). It provides:

> (a) No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[Emphasis in original.]